IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.08.2024

CORAM

**THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY**

**W.P.No.24630 of 2024 &**
**W.M.P.Nos.26954 and 26955 of 2024**

M/s.RGE Constructions and Development Private Limited,
(Represented by its Head-Indirect Taxation, Mr.Amit Gopal Shah)
181-183, 6th Floor, B-Wing, Embassy Splendid Tech Zone,
200 Feet Pallavaram, Thoraipakkam Radial Road,
Zamin Pallavaram, Chennai-600 117. ... Petitioner

Vs.

1. The Deputy Commissioner of GST & Central Excise,
Pallavaram Division,
Chennai Outer Commissionerate,
Sri Devi Temple Towers, No.6,
Sembakkam 2nd Main Road,
Sembakkam, Chennai- 600073.

2. The Additional Commissioner of GST & Central Excise,
Chennai South Commissionerate, No.692,
MHU Complex, Nandanam,
Chennai-600035. ... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the 1st Respondent in passing the impugned Order-in-Original No.191/2024-

AC/DC dated 08.08.2024 for the tax period 2019-2020 under Section 73 of the CGST Act, 2017 and quash the same as it has been issued in contravention of principles of natural justice, contrary to the provisions of law and without the application of mind.

For Petitioner : Ms.Sharanya Vijai K
for Mr.K.Vaitheeswaran
For Respondents : Mr.M.Santhanaraman
Senior Standing Counsel

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**ORDER**

This writ petition has been filed by the Petitioner challenging the order of the Respondent dated 08.08.2024.

2. Mr.M.Santhanaraman, learned Senior Standing Counsel takes notice on behalf of the respondents.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. The learned counsel of the Petitioner submitted that the Petitioner is engaged in Real estate activities and is a registered assessee under the Goods and Services Act, 2017 and an audit was conducted in the case of the Petitioner for a period from July 2017 to March 2020 and an Audit report in form ADT-02 dated 03.01.2022 was issued. She further submitted that on the basis of the said observation, a Show Cause Notice dated 07.02.2022 was issued to the Petitioner by the 2nd Respondent disputing the credit availed, alleging that the credit reversals made by the Petitioner is irregular. In the mean time, the Petitioner was issued with an ASMT-10 notice dated 16.06.2023, without disclosing the allegation against the Petitioner, for which the Petitioner filed a reply on 03.10.2023. Thereafter, DRC-01 notice was issued to the Petitioner on 02.04.2024 and the Petitioner submitted reply on 11.04.2024, but again the Petitioner was issued by Show Cause Notice dated 21.05.2024 reiterating the very same discrepancies. She further submitted that though the Petitioner sought time for filing reply to the said Show Cause Notice, impugned order dated 08.08.2024 came to be passed, without

affording an opportunity of hearing to the petitioner and therefore the same is in violation of principles of natural justice.

5. Further she would submit that without considering the replies submitted by the Petitioner in ASMT-10 notice as well as DRC-01 Notice, impugned order came to be passed. Hence, she prays to set aside the same.

6. On the other hand, the learned Senior Standing Counsel has submitted that since the replies filed by the Petitioner to the ASMT-10 notice as well as DRC-01 notice was not satisfactory, Show Cause notice dated 21.05.2024 came to be issued and since no reply was filed by the Petitioner to the said Show Cause Notice, that apart as the Petitioner failed to appear before the Respondents for personal hearing, the 1st Respondent passed the impugned order and therefore the question of violation of principles of natural justice does not arise. He further submitted that if the Petitioner is aggrieved by the impugned order, they can very well file an Appeal before the Appellate authority.

7. Heard the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents and also perused the materials available on record.

8. In the present case, the show cause notice dated 02.04.2024 was initially issued by the respondent, for which, a reply dated 11.04.2024 has been sent by the petitioner. Thereafter, prior to the passing of assessment order, another show cause notice was issued by the respondent on 21.05.2024, for which, the petitioner sought 4 weeks time for filing reply vide letter dated 18.06.2024. Thereafter, again vide letter dated 18.07.2024, the petitioner sought 2 more weeks time for filing the reply. Under these circumstances, on 08.08.2024, the impugned order came to be passed against the petitioner. In the said impugned order, the respondent had captured with regard to the time sought by the petitioner for filing the reply.

9. In terms of Section 75(4) of the Act, if the respondent are intend

to pass any order against an Assessee, they are supposed to provide an opportunity of personal hearing prior to the passing of final assessment order. In the present case, though the time was granted to the petitioner for filing the reply, the impugned order came to be passed without any intimation with regard to the provision of personal hearing opportunity, which is contrary to the terms of Section 75(4) of the Act. In such case, it is crystal clear that the impugned order came to be passed in violation of principles of natural justice and hence, the same is liable to be set aside. Accordingly, this Court passes the following orders:

> (i) The impugned order dated 08.08.2024 is set aside and the matter is remanded to the respondent for fresh consideration

> (ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of three weeks from the date of receipt of copy of this order.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice, by fixing the date of personal hearing, to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible.

10. With the above directions, this writ petition is disposed of. No cost. Consequently, connected miscellaneous petitions are also closed.

**28.08.2024**

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
arr/nsa

**KRISHNAN RAMASAMY.J**

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**To**

1. The Deputy Commissioner of GST & Central Excise,
   Pallavaram Division,
   Chennai Outer Commissionerate,
   Sri Devi Temple Towers, No.6,
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