IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.27347 of 2024
and
W.M.P. No.29841 of 2024

M/s.Malathy Constructions,
Represented by its Sole Proprietor,
No.25/5/301, Sanjay Gandhi Nagar, Nellore City,
Andhra Pradesh-524 004. ... Petitioner

Vs.

1.The Assistant Commissioner (Circle),
Commercial Taxes Department,
Government of Tamilnadu,
Chengalpattu,Tamil Nadu.

2.Deputy Commercial Tax Officer,
Commercial Taxes Department,
Government of Tamilnadu,
Chengalpattu, Tamilnadu. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records in order with GSTIN No.33AAQPY4956R1ZE/2018-19 dated 26.04.2024 passed under Section 73 of the TNGST Act, 2017 issued by the 1st Respondent and quash the same.

For Petitioner : Mr.S.H.Hredai

For Respondents : Mr.T.N.C.Kaushik
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 26.04.2024 and the summary of the impugned order dated 28.04.2024 of the 1st respondent on the ground that it suffers from manifest arbitrariness and non-application of mind to the material on record.

2. The petitioner is a sole proprietor of Malathy Constructions. The petitioner is also the Managing partner of a Firm called Malathy Constructions. The petitioner is registered under the GST Act, 2017. During the period 2018-19, the petitioner had filed its returns and paid appropriate taxes. While filing the returns in Form GSTR 3B for the month of May 2018, the petitioner had inadvertently claimed ITC relating to the partnership firm, though it is stated that the said ITC was never utilised by the petitioner.

3. Thereafter, the petitioner received a show cause notice on 18.03.2022 under Section 73 of the Act, issued by the 1st Respondent on the ground of ineligible input tax credit claimed by the petitioner for the month May, 2018.

4. Thereafter, the petitioner received notices from the 2nd Respondent for the very same dispute. In response the petitioner submitted its reply vide letter dated 30.11.2023, 26.02.2024 and 14.04.2024. Throughout the period between February and April 2024, the petitioner received parallel notices and reminders from both the Respondents. The petitioner appeared before 1st Respondent and communicated the replies filed by the petitioner before the 2nd Respondent. The petitioner was under the bona fide belief that the 2nd Respondent is the proper officer as they were part of the very same assessment circle.

5. The 1st Respondent passed an order dated 26.04.2024 ('Impugned Order') confirming the demand proposed in the Show Cause Notice dated 18.03.2022. In view of this above order, the 2nd Respondent passed an order dated 30.04.2024 dropping the proceedings initiated vide notice dated 30.01.2024.

6. Thereafter a notice dated 14.08.2024 was also issued to the petitioner by the 2nd Respondent demanding the arrears under the impugned order to be deposited failing which action would be taken against the petitioner under Section 79 of the TNGST Act, 2017.

7. It is submitted by the learned counsel for the petitioner that the 1st Respondent ought to have been aware that another officer from the very same assessment circle has also issued notice for the same period and same issue, that the petitioner was appearing before such officer. In any view, the 1st Respondent ought to have appreciated and taken into consideration that the petitioner has already filed his detailed replies before the 2nd respondent which was brought to the notice of the 1st respondent, however the impugned order proceeds on the basis that the petitioner has neither filed reply with supporting documents nor appeared in person.

8. It is the case of the petitioner that if an opportunity is granted they would submit the very same material that is furnished before the 2nd Respondent. The learned counsel for the Respondents does not have any objection to the same.

9. In view thereof, the impugned order is set aside. The petitioner is at liberty to file its objections along with supporting documents within a period of four weeks from the date of receipt of a copy of this order, if any such reply is filed, the same shall be considered by the Respondents and orders passed in

accordance with law within a period of two weeks thereafter. Failing which, the impugned order will stand restored. In view of the fact that the impugned order is set aside, the bank attachment shall stand lifted.

10. With the above directions, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

05.11.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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To:
1.The Assistant Commissioner (Circle),
Commercial Taxes Department,
Government of Tamilnadu,
Chengalpattu,Tamil Nadu.

2.Deputy Commercial Tax Officer,
Commercial Taxes Department,
Government of Tamilnadu,
Chengalpattu, Tamilnadu.

MOHAMMED SHAFFIQ, J.

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