IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.10.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.30427 of 2024 &
W.M.P.Nos.33057 and 330b58 of 2024

M/s.TVL Roja Steels,
Represented by its Partner
Mr.A.Nizamudeen
No.39/4, Jones Street,
Mannady, Chennai- 600 001. ... Petitioner

Vs.

The State Tax Officer,
Group VIII,
Chennai- 600 006. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records pertaining to the Impugned Notice dated 05.04.2024 in GSTIN:33AADFR4915N1ZO, issued by the Respondent and quash the same along with connected proceedings.

For Petitioner : Mr.Hari Radhakrishnan

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader

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ORDER

This writ petition has been filed by the petitioner challenging the impugned notice of the Respondent dated 05.04.2024 and to quash the same.

2. Mr.C.Harsha Raj, learned Additional Government Pleader takes notice on behalf of the Respondent.

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

4. The learned counsel appearing for the Petitioner would submit that initially the Respondent issued a notice to the Petitioner on 25.05.2023 calling upon the Petitioner to pay tax of Rs.2,95,308.35 under Section 73 of the Central Goods and Services Tax (in short 'CGST

Act') as well as Tamil Nadu Goods and Services Tax, 2017 (in short 'TNGST Act'), for which the Petitioner also sent a reply dated 31.05.2023 which was also uploaded in the GST portal on 08.01.2024, requesting the Respondent to drop the proceedings, however no personal hearing was granted and no orders were passed till date. In the meantime, the Respondent issued 2nd Show Cause Notice dated 05.04.2024 under Sections 74 of the CGST Act and TNGST Act, 2017 to the Petitioner for the same transaction and for the same period and the said notice is impugned in this Writ Petition.

5. Further, he would submit that as per the provisions of the GST Act, the statutory time limit to issue the final orders for the present case is three years from the due date of furnishing of annual return for the financial year 2017-18 and the Respondent ought to have rightly concluded and issued final orders for proceedings initiated vide notice dated 25.05.2023 at the latest by 31.12.2023. However, the Respondent had not passed any order within the stipulated

time limit and instead had chosen to issue the impugned notice dated 05.04.2024 under Section 74 of the CGST and TNGST Act, 2017 and therefore the Respondent is not empowered to issue the second notice for the same issue for the financial year 2017-18 and the extension of limitation provided under Section 74 of the Act cannot be used as a convenience tool in the event they are unable to conclude the proceedings under Section 73 of the Act.

6. He further contended that the ingredients of the Section 74 of the CGST Act has not been satisfied including the instructions No.5/2023-GST [F.NO.CBIC-20004/3/2023-GST] of the Department dated 13.12.2023 and the petitioner had not suppressed any material fact and not paid the tax willfully and as per the above instruction, ***mere non payment of tax would not attract Section 74 of the CGST Act.***

7. On the other hand, Mr.C.Harsha Raj, learned Additional Government Pleader (Taxes) appearing for the Respondent submitted

that in the present case, the Petitioner is liable to pay the GST under Reverse Charge Mechanism (RCM) as applicable under TNGST Act, 2017, but the Petitioner failed to pay the same and hence impugned show cause notice came to be issued. He further submitted that as per Section 74 of the CGST Act, non declaration of material facts and non payment of GST, which is liable to be paid would clearly amount to suppression and therefore the ingredients of Section 74 has been fulfilled while issuing Show Cause Notice. He therefore prays to dismiss this Writ Petition and the Petitioner may be permitted to reply for the aforesaid show cause notice before the authorities concerned.

7. In reply, the learned counsel appearing for the Petitioner would submit they are not liable to pay any tax and hence prays to set aside the impugned notice.

8. Heard both sides. Perused the records.

9. This Court in humpty number of cases has observed that mere non payment of tax would not attract Section 74 of the CGST Act.

However, in the case on hand it is contended by the learned counsel for the Respondent that the Petitioner is liable to GST under Reverse Charge Mechanism and the said fact has been denied by the learned counsel for the Petitioner and therefore this Court is of the view that the issue whether the Petitioner is liable to pay GST as per Reverse Charge Mechanism or not and the non payment of the same, would amount to willful or not are the issues to be raised before the authorities concerned.

10. In such view of the matter, this Court is not inclined to entertain this Writ Petition and the same is liable to be dismissed.

11. Accordingly, this Writ Petition is dismissed. However, liberty is granted to the petitioner to file reply for the impugned notice before the Authorities concerned and the Authorities concerned shall pass the Assessment Order without being influenced by any of the observations

made by this Court. The Petitioner is also at liberty to raise all the issues with regard to jurisdiction before Authorities concerned. No costs. Consequently, connected Miscellaneous Petitions are closed.

17.10.2024

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

The State Tax Officer,
Group VIII,
Chennai- 600 006.

KRISHNAN RAMASAMY.J.,

arr

W.P.No.30427 of 2024

17.10.2024