IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **06.12.2024**

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Writ Petition No.36730 of 2024
and W.M.P.Nos.39639 & 39640 of 2024

Sri.Mahaganapathi Steels & Cements,
Rep. by its Partner,
Subramani Raja,
No.2/159-G1, Omalur Main Road,
Suramangalam,
Salem. ... Petitioner

Vs.

The Assistant Commissioner (ST) (FAC),
Suramangalam Assessment Circle,
Salem. … Respondent

Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari calling for the records on the files of the respondent herein in GSTIN/33AAMFR0974Q1Z1/2017-18 in reference No.ZD331223253528I dated 29.12.2023 and quash the same.

For Petitioner : M/s.K.Siri Chandana

For Respondent : Mr.G.Nanmaran,
Special Government Pleader

O R D E R

This writ petition has been filed challenging the impugned order passed by the respondent bearing Reference No.ZD331223253528I dated 29.12.2023 for the assessment year 2017-18.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the trade of steel and cement, registered under the GST Act. The Petitioner in the regular course of its business had purchased inputs from various registered persons inside the State of Tamil Nadu. All such purchases were made by the Petitioner under the cover of tax invoices raised by those registered persons.

2.1. The Petitioner upon receipt of goods made their outward supplies and duly reported the same in their monthly returns in FORM GSTR-3B under Section 39 of the GST Act. Consequently, the Petitioner had availed Input Tax Credit (ITC) on the purchases of goods from such registered persons based on the tax invoices raised on them. Thus, there is a due compliance of provisions of Section 16(2) of the TN GST Act An intimation in Form GST DRC-01A dated 26.09.2023 was issued by the Respondent, stating that there is a mismatch of input tax credit availed as per FORM GSTR-3B and the availability as per FORM GSTR-2A and requested to furnish the details for the input tax credit. By such intimation, they were advised to pay the amount of taxes as ascertained by 06.10.2023 along with penalty under Section 122 and interest under Section 50(3) of the GST Acts. Thereafter, GST DRC-01 dated 12.12.2023 (Show Cause Notice) was issued to the Petitioner invoking Section 74 of the TN GST Act in which they were advised to pay the tax ascertained along with the amount of applicable interest within 30 days. That Show Cause Notice in FORM GST DRC-01 was confirmed by an impugned proceeding in Form GST DRC-07 dated 29.12.2023 along with penalty and interest thereon.

3. Learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of ***M/s.Balakrishnan, Balu Cables vs. O/o. The Assistant Commissioner of GST & Central Excise in W.P.(MD)No.11924 of 2024 dated 10.06.2024***, to submit that this Court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes.

4. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that they may be granted one final opportunity

before the adjudicating authority to put forth their objections to the proposal, to which the learned Special Government Pleader for the respondent does not have any serious objection.

5. In view thereof, the impugned order dated 29.12.2023 is set aside and the petitioner shall deposit 25% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order. The impugned order shall be treated as show cause notice and the petitioner shall submit its objections within a period of four weeks from the date of receipt of a copy of this order along with supporting documents/material. If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the above deposit is not paid or objections are not filed within the stipulated period, i.e., four weeks from the date of receipt of a copy of this order, the impugned order shall stand revived.

6. Accordingly, the writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

06.12.2024 (vm)

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

To:

The Assistant Commissioner (ST) (FAC),
Suramangalam Assessment Circle,
Salem.

J.SATHYA NARAYANA PRASAD,J.

vm

W.P.No.36730 of 2024

06.12.2024