IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.36608 of 2024
and
W.M.P.Nos.39483, 39484, 39485 & 39486 of 2024

Shri.R.Sedhu Raman
Proprietor of M/s.Kumaran Parcel Services,
No.15/2, 200, Nehru Salai,
Thirumalai Nagar, Kolathur,
Chennai, Tamil Nadu – 600 099. ...Petitioner

-Vs-

1.The Union of India,
Represented by the Secretary,
Department of Revenue,
Ministry of Finance,
No.137, North Block,
New Delhi – 110 001.

2.The Goods & Services Tax Council,
Represented by its Secretary,
GST Council Secretariat,
5th Floor Tower – II Jeevan Bharti Building,
Janpathy Road, Connaught Palance,
New Delhi – 110 001.

3.The Central Board of Indirect Taxes & Customs,
Represented by its Director,
North Block, New Delhi – 110 001.

4.The State of Tamil Nadu,
Represented by its Secretary to Government,
Commercial Taxes and Registration Department
Secretariat, Fort St. George, Chennai – 600 009.

5.The Deputy State Tax Officer – II,
Villivakkam Assessment Circle,
No.15 & 16, 100 Feet Road,
Malligai Avenue, Kolathur,
Chennai – 600 099.

6.The Deputy Commissioner (ST) (FAC),
GST Appeal, Chennai – I,
Annexe Building, 2nd Floor,
No.1, Greams Road, Chennai – 600 006.

7.The Branch Manager,
Karur Vysya Bank,
S.No.52, Puthagaramto,
Surapet Main Road,
Near Velammal Engineering College,
Puthagaram, Chennai – 600 099.

8.The Branch Manager,
Indian Bank,
No.12A, Red Hills Road,
Kolathur, Chennai – 600 099. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorari, to call for the records pertaining to the impugned order dated 26.12.2023 in GSTIN 33BJIPS7202J1Z3/2017-18 passed by the fifth respondent and quash the same and pass such further orders.

For Petitioner	:	Mr.R.Sethu Prabakaran
For R1 to R3	:	Mr.Rajinish Pathiyil, Senior Panel Counsel
For R4 to R6	:	Mr.V.Prasanth Kiran Government Advocate

O R D E R

Mr.Rajinish Pathiyil, learned Senior Panel Counsel takes notice on behalf of respondents 1 to 3. Mr.V.Prasanth Kiran, learned Government Advocate takes notice on behalf of respondents 4 to 6. With the consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

2. The present writ petition is filed challenging the impugned order passed by the fifth respondent dated 26.12.2023, relating to the assessment year 2017-18.

3. The petitioner is engaged in the business of transportation of goods by roadways, i.e., Goods Transport Agency (GTA). The petitioner is a registered dealer under Goods and Services Act, 2017. During the relevant period, the petitioner filed its returns and paid the appropriate taxes.

However, a show cause notice dated 14.08.2023 was issued calling upon the petitioner to show cause as to why a tax of Rs.6,41,250/- should not be demanded on the ground that there has been a difference in turnover as per Form 26AS of the Income Tax Act and GSTR- 3B returns filed for the financial year 2017-18. However, the petitioner had neither filed its reply nor paid the tax amount. Hence, the impugned order came to be passed, confirming the proposal contained in the above-mentioned Show Cause Notice vide impugned order in FORM GST DRC-7 dated 26.12.2023 passed in GSTIN 33BJIPS7202J1Z3/2017-18.

4. Learned counsel appearing for the petitioner submitted that the petitioner became aware of the impugned order dated 26.12.2023 only when their bank accounts were frozen in the month of June, 2024. Subsequently, the petitioner approached its banker, the Karur Vysya Bank, Puthagaram, and Indian Bank, Kolathur, who indicated that the GST department had initiated recovery proceedings pursuant to the order dated 26.12.2023.

5. Learned counsel contended that the petitioner preferred a statutory appeal before the 6th respondent herein upon payment of pre-deposit. The

filing of the appeal was communicated to the 5th respondent. Thereafter, the Assistant Commissioner (ST) (FAC), Villivakkam Assessment Circle, temporarily withdrew the bank attachments vide letter Pd1.1/2024-25/DSTO-3 dated 05.06.2024. However, the said appeal was rejected by the 6th respondent vide order dated 15.10.2024 on the ground that it was filed beyond the period of limitation. Thereafter the Department once again attached the petitioner's bank account in Karur Vysya Bank, Puthagaram and Indian Bank, Kolathur and further recovered an amount of Rs.2,97,931/- from the petitioner's bank account at Indian Bank, Kolathur on 15.11.2024.

6. It is submitted by the learned counsel for the petitioner that neither the show cause notices nor the impugned order has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded under the field “Additional Notices and Orders” tab on the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies.

7. Learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of ***M/s.K.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 tax.

8. It is further submitted by the learned counsel for the petitioner that they have already remitted pre-deposit before the Appellate Authority and a further sum of Rs.2,97,931/- was recovered by the respondents from the petitioner though bank attachment and they may be granted an opportunity before the adjudicating authority to put forth their objections to the proposal.

9. Taking into account the peculiar facts of the case, wherein the petitioner has already remitted around 33% of the disputed tax amount, this Court is of the considered view that the petitioner may be granted one final opportunity to put forth their objections, which was not objected to by the learned Senior Panel Counsel as well as the learned Government Advocate for the respondents.

10. In view thereof, the impugned order passed by the fifth respondent dated 26.12.2023, is hereby set aside and this Court is inclined to pass the following orders:

a) It is open to the respondents to verify the above statement made by the learned counsel for the petitioner that 33% of the disputed tax amount has been remitted already, the respondents may verify the same.

b) If the statement made by the learned counsel for the petitioner regarding the payment of aforesaid disputed tax amount is incorrect, the respondents authority shall intimate the same to the petitioner, who shall deposit 25% of disputed tax within a period of two weeks from the date of such intimation.

c) Subject to verification of payment of the aforesaid disputed tax amount or on payment of 25% of disputed tax, the bank attachment shall be lifted forthwith.

d) On complying with the above conditions, the impugned order of assessment 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.

e) If any such objections are filed within the stipulated period, the respondents shall consider the same and pass appropriate orders in accordance with law after affording the petitioner a reasonable opportunity of hearing.

f) If objections are not filed within the stipulated period i.e., four weeks from the date of receipt of a copy of this order or if deposit of 25% is not made within the stipulated period, if not already paid, the impugned order of assessment shall stand revived.

Accordingly, the **Writ Petition stands disposed of with the above observations and directions**. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

09.12.2024

cda
Index : Yes / No
Speaking/Non Speaking order

To

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J.SATHYA NARAYANA PRASAD, J.

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