IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.36783 of 2024
and
W.M.P.Nos.39696 & 39697 of 2024

S.N.A.Electricals
Represented by its Proprietor : Mr.Srinivasan Nithyanandam,
No.212, Udayakumar Street, Sathyavanimuthu Nagar,
Vyasarpadi,
Chennai – 600 039. ...Petitioner

-Vs-

1.The Deputy State Tax Officer – 1,
(Forermly known as the Deputy Commercial Tax Officer),
Villivakkam Assessment Circle,
No.15 & 16, 100 Feet Road, Malligai Avenue,
Kolathur,
Chennai – 600 099.

2.The Assistant Commissioner (State Tax),
Villivakkam Assessment Circle,
No.15 & 16, 100 Feet Road, Malligai Avenue,
Kolathur,
Chennai – 600 099.

3.The Bank Manager,
Indian Overseas Bank – Vyasarpadi Branch,
No.338, Mahakavi Bharathiyar Nagar West,
Vyasarpadi Industrial Estate,
Vyasarpadi,
Chennai – 600 039. ...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 Certiorarified Mandamus, calling for records in Reference Number: ZD331223258770K dated 29.12.2023 on the file of the first respondent and quash the same as contrary to law, consequently direct the second respondent to DE freeze the Bank Account Number C.A.No.039402000001516 in DRC-13 bearing GSTIN:33ABWPN6398K2ZM/2017-18 dated 17.05.2024 of the petitioner-registered taxable person and pass such further orders.

For Petitioner	:	M/s.V.Vijayalakshmi
For Respondents	:	Mr.G.Nanmaran Special Government Pleader (Tax)

ORDER

Mr.G.Nanmaran, learned Special Government Pleader (Tax) takes notice on behalf of the respondents. 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 first respondent dated 29.12.2023.

3. The petitioner is engaged in the business of undertaking works contract services. 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. While scrutinizing the petitioner's return, it was found that there were alleged discrepancies in the comparison of GSTR-3B Vs. Form 26AS of income tax and GSTR-3B Vs. GSTR9/9C.

4. Learned counsel appearing for the petitioner submitted that the first respondent had issued a show cause notice in Form ASMT-10 on 11.07.2023 and a Summary of Show Cause Notice in FORM GST DRC-01 on 14.08.2023. Further personal hearing was offered on 23.08.2023 and a reminder -1 was also issued on 15.12.2023. Thereafter, the petitioner has filed a detailed reply on 22.12.2023. However, the impugned order came to be passed.

5. Learned counsel further submitted that though the petitioner has responded to the show cause notice, bank account of the petitioner maintained with the third respondent were subjected to freezing orders of the second respondent along with recovery of the entire demand from the bank account, albeit the intimation and notices were uploaded by the first respondent on the GST portal.

6. Learned counsel appearing for the petitioner contended that based

on the impugned order of the first respondent, the second respondent has proceeded to issue a statutory demand notice in FORM DRC-13 dated 17.05.2024 for recovery of arrears of tax to the third respondent, namely, The Indian Overseas Bank, Vyasarpadi Branch, by freezing the current account No.039402000001516 along with recovery of the entire demand from the bank account of the petitioner maintained with the third respondent.

7. 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.

8. 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.

9. It was further submitted that since the entire demand amount was recovered from the petitioner on 05.06.2024, 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 appearing for the respondents does not have any serious objection.

10. In view thereof, the impugned order passed by the first respondent dated 29.12.2023 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 the entire demand amount was recovered from the petitioner already, the respondents may verify the same.

b) If the statement made by the learned counsel for the petitioner regarding the payment of entire demand 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 entire demand amount or on payment of 25% of disputed tax, the bank attachments 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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