IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.37390 of 2024
and
W.M.P.Nos.40396 & 40397 of 2024

Tvl.Jayam Sai Concrete Works,
Represented by its Proprietor – Vinitha Maniraj
5/2-A, Thirumudigoundanur,
Karur,
Tamil Nadu – 639 118. ...Petitioner

-Vs-

The State Tax Officer Investigation Gr-I,
Office of the Commercial Tax Officer,
Inspection – 1,
Erode. ...Respondent

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, calling for the records relating to the impugned proceedings passed by the respondent in the impugned order in GSTIN:33AKDPV9273H1ZQ/2018-2019 dated 30.08.2024 along with the consequential order under Section 74 of the CGST/TNGST Act,2017 in FORM GST DRC 07 bearing No.ZD330924007690I dated 02.09.2024 to quash the same and pass such further orders.

For Petitioner	:	M/s.R.Hemalatha
For Respondents	:	Mr.T.N.C Kaushik Additional Government Pleader (Tax)

ORDER

Mr.T.N.C Kaushik, learned Additional Government Pleader (Tax) takes notice on behalf of the respondent. 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 respondent dated 30.08.2024 relating to the assessment year 2018-19.

3. The petitioner is engaged in a wholesaler/distributor of cement products. The petitioner is a registered dealer under Goods and Services Act, 2017. During the course of Audit Inspection conducted on 24.03.2023, the officers had verified the documents and records filed by the petitioner for FY 2018-19 and had found certain discrepancies as follows:

a) Difference in outward supply between GSTR 3B and Books of accounts

b) Non filing of returns in FORM GSTR 9 & 9C

c) Non-payment of tax under RCM for the freight charges

d) Non-payment of tax for the private coaching fee receipts

4. Learned counsel appearing for the petitioner submitted that the petitioner was served with a notice in FORM GST DRC 01A dated 11.12.2023 intimating the liability of tax/interest/penalty under Section 73(5) of the CGST Act, 2017, imposing the interest to the tune of Rs.7,96,092/- (CGST: Rs.3,98,046/- and SGST: Rs.3,98,046/-) by the State Tax Officer (Int.), Inspection Group VI, Erode for the tax paid before the issuance of the above said notice. Subsequently, the said inspection officer had issued a show cause notice in FORM GST DRC 01 vide ref No.ZD330524074126K dated 11.05.2024 imposing the interest of Rs.7,96,092/- (CGST: Rs.3,98,046/- and SGST: Rs.3,98,046/-) and penalty of Rs.2,73,200/- (CGST: Rs.1,36,600/- and SGST: Rs.1,36,600/-) under Section 74 of the CGST Act, 2017.

5. It is submitted by the learned counsel for the petitioner that the petitioner had filed a reply dated 05.06.2024 and had paid the tax liability

through DRC 03 challan immediately after the inspection was conducted. Thereafter, the respondent had issued three reminder notices vide ref nos.ZD330724087964V dated 08.07.2024, ZD330724228323M dated 19.07.2024, ZD330824028570J dated 05.08.2024 along with the opportunity of personal hearing. However, the petitioner has not availed the opportunity of personal hearing. Hence the impugned order came to be passed.

6. Learned counsel contended that three reminder notices have not 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. The learned counsel for the petitioner would then 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***. 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. It is further submitted that the petitioner had already paid the tax liability immediately after the inspection was conducted.

8. The learned counsel for the petitioner would submit that they would pay the balance remaining out of the 25% after deducting the monies which is stated to have been paid, which was not objected to by the learned Additional Government Pleader for the respondent who would seek the liberty of this Court to verify if the above statement is correct.

9. In view thereof, the impugned order passed by the respondent dated 30.08.2024 is hereby set aside and this Court is inclined to pass the following orders:

a) It is open to the respondent to verify the above statement. If on such verification the above statement is correct the petitioner would be intimated within a week from the date of receipt of a copy of this order by the respondent authority and the petitioner shall deposit the balance amount out of 25% of the disputed taxes within a week of such intimation.

b) However, if on verification it is found that the above statement is incorrect the same would be intimated to the petitioner within a week from the date of receipt of a copy of this order and the petitioner would pay 25% or balance of the disputed taxes within a week of such intimation.

c) On complying with the above conditions, the impugned order of assessment shall be treated as show cause notice and the petitioner shall file their objections within a period of four weeks from the date of receipt of a copy of this order.

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

e) 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

The State Tax Officer Investigation Gr-I,
Office of the Commercial Tax Officer,
Inspection – 1,
Erode.

J.SATHYA NARAYANA PRASAD, J.

cda

W.P.No.37390 of 2024

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