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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.37400 of 2024
and
W.M.P.Nos.40406 & 40408 of 2024

M/s.Balaram Vemuri
Represented by its Proprietor, Mr.Balaram Vemuri,
Having its registered office at
19, Velachery Main Road, Technip Center,
Guindy, Chennai – 600 032. ...Petitioner

-Vs-

1.The Assistant Commissioner of State Tax,
Office of the Assistant Commissioner of State Tax,
Guindy Assessment Circle, Room No.253, 2nd Floor,
Integrated Building for Commercial Taxes & Registration,
Nandanam, Chennai – 600 035.

2.Indian Overseas Bank,
Represented by the Manager,
No.40/927, Ring Road, Ground Floor,
Adjacent to Telco Yard, Near Benz Circle,
Andhra Pradesh, Vijayawada – 520 010.

3.Tvl.Just Dial Limited,
3rd Floor, Block II, Unit B,
184-187, Temple Step, Anna Salai Road,
Little Mount, Chennai – 600 015.

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4.Tvl. Technip Energies India Limited,
No.19, Technip Center, Velachery Main Road,
Guindy, Chennai – 600 032.

5.Tvl.Aparna Constructions and Estates Private Limited,
8th Floor, 6-3-352/2 and 3 Flat No.802,
Astral Heights, Road No.1,
Banjarahills, Hyderabad,
Telangana – 500 034. ...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 the records on the file of the first respondent in the impugned proceedings against the impugned order in Form GST DRC-07 bearing reference No.ZD330424119670P dated 16.04.2024, under the provisions of CGST Act, 2017 and quash the same and consequently direct the first respondent to pass DE NOVO order and pass such further orders.

For Petitioner	:	M/s.P.R.Lavanya
For Respondents	:	M/s.Amrita Dinakaran, Government Advocate (Tax)

ORDER

M/s.Amrita Dinakaran, learned Government Advocate (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.

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2. The present writ petition is filed challenging the impugned order passed by the first respondent dated 16.04.2024 relating to the assessment year 2018-19.

3. The petitioner is engaged in the business of publishing Indian Telugu- language weekly and monthly magazine launched in 1984 which is published by Swati Publications. The petitioner is a registered dealer under Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. While scrutinizing the petitioner's return, it was found that there was alleged short payment of output tax as per Form GSTR-9 filed for FY 2018-19.

4. Learned counsel appearing for the petitioner submitted that a show cause notice was issued in Form GST DRC-01 to the petitioner on 28.12.2023 proposing to demand tax to the extent of Rs.35,67,882/- along with interest and penalty. Subsequently, the first respondent had served three reminder notices dated 08.02.2024, 16.02.2024 and 28.02.2024 respectively. Further, personal hearings was offered on 29.01.2024, 16.02.2024, 22.02.2024 and 04.03.2024. However, the petitioner had neither filed its reply nor paid the tax amount. Hence, the impugned order came to be passed

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confirming the tax demand in toto along with interest and penalty.

5. It is submitted by the learned counsel for the petitioner that on 20.08.2024, a notice in Form GST DRC-13 was served to the banker of the petitioner directing them to attach the bank account, on account of default in payment of the tax dues and confirmed vide order dated 16.04.2024. Subsequently, on 08.11.2024, the first respondent had served Form GST DRC-13 notices to the petitioner's customers “M/s.Just Dial Limited and M/s.Technip Engergies India Limited and various others tenants in Chennai and Hyderabad directing them to make payment of the outstanding dues, which is payable or become payable to the petitioner directly to the first respondent”. Learned counsel contended that neither the show cause notices nor the impugned order of assessment 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.

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6. The 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 taxes.

7. 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. Learned counsel contended that there is a bank attachment and the same may be lifted, to which the learned Government Advocate appearing for the respondents does not have any serious objection.

8. In view thereof, the impugned order passed by the first respondent dated 16.04.2024 is hereby set aside and this Court is inclined to pass the following orders:

a) The petitioner shall deposit 25% of the disputed tax within a period of two weeks from the date of receipt of a copy of this order.

b) On complying with the above condition, the impugned order of

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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.

c) If any such objections are filed, the same shall be considered by the respondents and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner.

d) If the above deposit is not paid or objections are not filed within the stipulated period, i.e., two weeks and four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand revived.

e) The bank attachment shall be lifted forthwith on complying with the above condition i.e., payment of 25% of disputed taxes within a period of two weeks from the date of receipt of a copy of this order.

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.

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cda
Index : Yes / No
Speaking/Non Speaking order

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