IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.37746 of 2024
and
W.M.P.Nos.40805 and 40807 of 2024

NPS Painting Contractor,
No.25, Kattabomman Street,
Virugambakkam, Chennai 600 092.
Rep. by its Proprietor
.. Petitioner

Vs.

The State Tax Officer,
Saligramam Assessment Circle,
No.242, Second Floor,
Integrated Building of Commercial Taxes
and Registration Department,
Fanepet, Chennai 600 035. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the respondent leading to issuance of Impugned Order dated 30.08.2024 vide GSTIN:33BDBPS4396E1ZH/2019-20 and quash the same.

For Petitioner : Mr.S.Sathyanarayanan

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 30.08.2024, on the limited ground that the impugned order traverses beyond the show cause notice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a painting contractor (works contract) and is registered under the GST Act. During the relevant period of 2019-20, the petitioner has filed the returns and paid appropriate taxes. However, on verification of the returns filed by the petitioner certain discrepancies were noticed viz.,

i) Difference in outward supply.

ii) Non filing of GSTR 9 and GSTR 9C.

3. It is submitted by the learned counsel for the petitioner that a show cause notice in Form DRC 01 was issued on 16.05.2024, proposing that the petitioner is doing a Residential Real Estate Project (RREP) and

have claimed Input Tax Credit on inward supplies which they are allegedly not entitled to. The petitioner responded to the above proposal vide its reply dated 06.08.2024, wherein it was inter alia submitted that the petitioner is not engaged in promoting / developing of any Residential Real Estate Project instead the petitioner is engaged only in painting contract work. On considering the objection the proposal was dropped. However, while passing the impugned order the respondent found that the Profit and Loss Account during the assessment year 2019-20 was Rs.5,21,20,532/-, while the outward supply value declared in the GSTR 3B was Rs.3,62,10,936/- and Form 26 AS was received for a sum of Rs.4,36,67,661/-. The difference to the extent of Rs.1,59,09,596/- was treated as suppression, it was also found that the petitioner has not filed annual return in GSTR 9 and GSTR 9C, allegedly in violation of the requirement under Rule 80 of the CGST Rules inasmuch as the taxable value of supplies exceeds Rs.5 Crores.

4. It is submitted by the learned counsel for the petitioner that the difference between the profit and loss account and the returns filed by the petitioner treated as suppression and also non filing of GSTR 9 and

GSTR 9C, was never the subject matter of the show cause notice which was issued. It was thus submitted that in respect of these two issues the petitioner never had an opportunity to respond and thus the order is in violation of principles of natural justice and would thus request that they may granted an opportunity to deal with it.

5. In response the learned counsel for the respondent would submit that the petitioner may treat the impugned order as a show cause notice and file its objections within a period of 4 weeks from the date of receipt of a copy of this order. On receipt of such objections order shall be passed after affording the petitioner a reasonable opportunity of hearing.

6. In view thereof, the impugned order is set aside. The petitioner shall treat the impugned order as a show cause notice and file its objections within a period of 4 weeks from the date of receipt of a copy of this order. If any such objections are filed by the petitioner, the respondent shall consider the objections and pass orders after affording the petitioner a reasonable opportunity of hearing.

7. Accordingly, the writ petition stands disposed of. No cost. Consequently, connected miscellaneous petitions are closed.

19.12.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
spp

To:

The State Tax Officer,
Saligramam Assessment Circle,
No.242, Second Floor,
Integrated Building of Commercial Taxes
and Registration Department,
Fanepet, Chennai 600 035.

MOHAMMED SHAFFIQ, J.

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