BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.04.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.8934 of 2024
and
W.M.P.(MD) Nos.8127 & 8129 of 2024

Karaikudi Medical Centre and Hospital Ltd.,
Represented by its Authorized Signatory
Dr.Saleem Mohamed,
No.42/1 & 42/2, Mudiyarasan Street,
100 Feet Road, Karaikudi,
Sivaganga District, Tamil Nadu – 630 002. ... Petitioner

Vs.

The State Tax Officer,
Karaikudi Assessment Circle,
No.54, Alamelu Illam,
Aruna Nagar II Street,
Karaikudi, Sivaganga District,
Tamil Nadu – 630 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned order dated 2912.2023 bearing reference No.GSTIN33AAFCK4391J2ZC/2017-18 on the file of the respondent and quashing the same and directing the respondent to enter *de novo* adjudication and pass orders afresh after providing an opportunity of hearing to the petitioner.

For Petitioner : Mr.S.Ramamurthy

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

Mr.R.Suresh Kumar, learned Additional Government Pleader, takes notice for the respondent. With the consent of the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent, this Writ Petition is disposed of, at the time of admission.

2. The petitioner has challenged the impugned order dated 29.12.2023 bearing reference No.GSTIN33AAFCK4391J2ZC/2017-18 passed by the respondent. By the impugned order, the respondent has confirmed the tax together with interest under Section 50 of the TNGST Act, 2017 and the penalty under Section 73(9) of the said Act, under the following heads:

Sl. No.	Particular	CGST	SGST
1	Tax on difference in turnover	Rs.14,84,800/-	Rs.14,84,800/-
2	Tax on testing tax	Rs.5,21,197/-	Rs.5,21,197/-
3	Tax on RCM towards rent	Rs.3,26,795/-	Rs.3,26,795/-
4	Tax on other income	Rs.1,77,388/-	Rs.1,77,388/-
5	Tax on RCM towards professional fees	Rs.36,05,765/-	Rs.36,05,765/-

6	Interest u/s 50 of the act	Rs.62,43,290/-	Rs.62,43,290/-
7	Penalty u/s. 73(9) of the act	Rs.6,11,595/-	Rs.6,11,595/-
Total		Rs.1,29,70,830/-	Rs.1,29,70,830/-
Grand Total		**Rs.2,59,41,660/-**	

3. The specific case of the petitioner is that the petitioner is a hospital engaged in providing health services and therefore, not only the services provided by the petitioner but also the doctors/physician who are consulted are exempted from payment of GST under Sl.No.74 to the Notification No.12/2017-CT (Rate) dated 28.06.2017. It is further submitted that similarly, testing charges are also exempted under the same Notification.

4. It is submitted that as far as the tax on rent on reverse charge basis is concerned, Notification No.13/2017-CT (Rate) dated 28.06.2017 does not apply for renting of commercial property and the petitioner was therefore not required to pay the tax on reverse charge basis. Specifically, the learned counsel for the petitioner would draw attention to Sl.No.5AA to Notification No.13/2017-CT (Rate) dated 28.06.2017 which reads as under:-

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Services
(1)	(2)	(3)	(4)
5AA	Service by way of renting of residential dwelling to a registered person	Any person	Any registered person

5. It is further submitted that the bulk of the demand on reverse charge basis towards the professional fees apart from being exempted under Sl.No.74 to the Notification No.12/2017-CT (Rate) dated 28.06.2017 pertains to the pre-GST period i.e., for the period starting from 1st April, 2017 and ending with 30th June, 2017.

6. It is submitted that the respondent has relied on the profit and loss account of the petitioner which is for the whole assessment years and which was compared with the GST return filed by the petitioner in GSTR-9, for which, GSTR-9C was also issued under Rule 80(3) of the TNGST Rules, 2017. It is further submitted that the impugned demand apart from being contrary to the aforesaid Notification is also without jurisdiction as pre-GST turnover has been taxed under the provisions of

the TNGST Act, 2017 by erroneous comparison between the incomes in the profit and loss account and in the returns filed in GSTR-9 and GSTR-9C.

7. The learned Additional Government Pleader for the respondent would submit that this Writ Petition is devoid of merits and is liable to be dismissed. It is further submitted that all the issues which are canvassed before this Court can be canvassed by the petitioner by filing a statutory appeal under Section 107 of the TNGST Act, 2017 and therefore prays for dismissal of this Writ Petition. That apart, the learned Additional Government Pleader would submit that there are disputed questions of fact and therefore on this count also, this Writ Petition is liable to be dismissed.

8. After considering the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent and perusing the Notifications filed before this Court, *prima facie*, the petitioner appears to be entitled for exemption under the Notification No.12/2017-CT (Rate) dated 28.06.2017 insofar as the Sl.Nos.2, 3, 4 & 5 in the Table in paragraph No.2 of this order are

concerned and under Notification No.13/2017-CT (Rate) dated 28.06.2017 insofar as the Sl.No.1 in the said Table is concerned. Insofar as the difference in the turnover which is in Sl.No.1 of the said Table is concerned, the submission of the learned counsel for the petitioner is reasonable as there was an erroneous consideration of the turnover/income in the profit and loss account for the period in dispute which includes the period covered by pre-GST era under the provisions of the Finance Act, 1994.

9. Considering the fact that this issue would require a proper and detailed consideration by the respondent and considering the fact that many of the grounds which are canvassed before this Court were not taken up by the petitioner before the respondent which has culminated in the impugned order, the impugned order is set aside and the case is remitted back to the respondent to pass a fresh order on merits and in accordance with law, within a period of 8 weeks from the date of receipt of a copy of this order.

10. The petitioner is directed to co-operate with the respondent by filing proper reply, within a period of two weeks from the date of receipt

of a copy of this order. The impugned order which stands set aside in this order shall be treated as corrigendum to the Show Cause Notice already issued to the petitioner.

11. Accordingly, this Writ Petition stands allowed by way of remand. No costs. Consequently, connected Miscellaneous Petitions are closed.

10.04.2024

Index: Yes / No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

JEN

Copy To:

The State Tax Officer,
Karaikudi Assessment Circle,
No.54, Alamelu Illam,
Aruna Nagar II Street,
Karaikudi, Sivaganga District,
Tamil Nadu – 630 001.

C.SARAVANAN, J.

JEN

W.P.(MD) No.8934 of 2024
and
W.M.P.(MD) Nos.8127 & 8129 of 2024

10.04.2024