BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.11541 of 2024

M/s.Sree Balaji Traders
Represented by its Proprietor,
Mr.C.Tharmaraj ... Petitioner

Vs.

1.The Commissioner of GST & Central Excise (Appeals)
Coimbatore @ Madurai,
O/o.The Commissioner of GST & Central Excise (Appeals),
Circuit Office, C.R.Building,
No.4, Lal Bahadur Sasthri Road,
GST Bhawan,
BIBI Kulam,
Madurai – 625 002.

2.The Additional/Joint Commissioner of GST & Central Excise,
O/o. The Additional/Joint Commissioner of GST & Central Excise,
Tractor Street, NGO "A" Colony, Tirunelveli – 627 007.
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the first respondent vide his order in Appeal No.21/2023-MDU-GST-COMMR-APP dated 30.10.2023 and quash the same as it is illegal and in gross violation of principles of natural justice and further direct the first respondent to entertain the appeal decide on merits after considering the payment made by the petitioner.

For Petitioner : Mr.A.Satheesh Murugan

For Respondents : Mr.N.Dilip Kumar
Standing Counsel

O R D E R

This Writ Petition is filed challenging the impugned order in Appeal No. 21/2023-MDU-GST-COMMR-APP dated 30.10.2023, passed by the first respondent on the premise that the appeals filed by the petitioner against the order in original dated 23.11.2022 has been rejected on the ground that the petitioner has not complied with the mandatory condition of pre-deposit of 10% of the disputed tax amount of Rs.37,53,559/-.

2. It is submitted by the learned counsel for the petitioner that the petitioner had preferred an appeal against the order in original before the first respondent and the same was numbered as Appeal No.23/2023-GST, Madurai. The petitioner had appeared for hearing before the appellate authority/first respondent and it was submitted that the submissions were made on merits. However, the impugned order has been passed on the premise that the petitioner has not complied with the pre-deposit which is condition precedent even for entertaining / numbering the appeal. The relevant portion of the impugned order is extracted hereunder:

"7.7. In the light of the above, I find that the payment claimed to made through DRC-03s are not related to the disputed tax amount of Rs.3,75,35,586/- on outward supply of cements to unregistered person without tax invoices and thus, the Appellant has not paid 10% pre-deposit as mandated under Section 107 (6)(b) of CGST Act, 2017. Accordingly, I hold that the appeal is liable to be rejected on the grounds of non payment of mandatory pre-deposit in terms of Section 107(6) of CGST Act, 2017, without going into the merits of the appeals."

3. It was submitted that the petitioner was never put on notice of the fact that they have not complied with 10% pre-deposit and thus the appeals are liable to be dismissed. It was also submitted that if the petitioner had only been put on notice, they would have been in a position to demonstrate that they have complied with Section 107(6) of CGST Act.

4. The learned counsel for the respondents would submit that any appeal if filed, it is open to the appellate authority to examine, if the conditions of pre-deposit which is a *sine-qua-non* for maintaining the appeal has been complied with, even at the time of hearing. Any appeal which has been filed without complying with the above pre-condition is liable to be dismissed. There can be no quarrel on this position.

5. The grievance of the petitioner is however the dismissal of the appeal without putting the petitioner on notice of the non-compliance relating to pre-deposit for entertaining the appeal resulting in denial of an opportunity to the petitioner to demonstrate/establish that the statutory pre-deposit has been complied with.

6. This Court finds merit in the above grievance. In the circumstances, this Court is of the view that the matters may be remitted back to the appellate authority. The petitioner shall establish that all the conditions relating to appeal including pre-deposit is complied with. If the petitioner is able to establish the same, the appellate authority will proceed to examine and pass orders on merits, failing which the impugned order of dismissal of appeal shall stand revived.

7. With the above observations, this Writ Petition is disposed of. No costs.

22.08.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To:

1.The Commissioner of GST & Central Excise (Appeals)
Coimbatore @ Madurai,
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2.The Additional/Joint Commissioner of GST & Central Excise,
O/o. The Additional/Joint Commissioner of GST & Central Excise,
Tractor Street, NGO "A" Colony, Tirunelveli – 627 007.

MOHAMMED SHAFFIQ, J.

Nsr

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