BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD) Nos.28825 and 28826 of 2024
and
W.M.P.(MD) Nos.24424 and 24438 of 2024

M/s.Deccan Construction Company,
Rep., by its Managing Partner R.Mithun Sekar,
64, new Pankajam Colony, Munichalai Road,
Madurai-625 009. .. Petitioner in both W.Ps.

Vs.

The Commercial Tax Officer,
Munichalai Road, Madurai East,
Commercial Tax Buildings, Madurai. .. Respondent in both W.Ps.

Prayer in W.P.(MD) No.28825 of 2024: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records in the impugned Order in Ref.No.ZD330824311292P Dated 31.08.2024 passed by the Respondent and quash the same as is wholly without jurisdiction and clear violation of statutory provisions and direct the respondent to pass an assessment order afresh after considering the reply to the show cause notice and an opportunity of personal hearing.

Prayer in W.P.(MD) No.28826 of 2024: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records in the impugned Order in Ref.No.ZD330824311633L Dated 31.08.2024 passed by the Respondent and quash the same as is wholly without jurisdiction and clear violation of statutory provisions and direct the respondent to pass an assessment order afresh after considering the reply to the show cause notice and an opportunity of personal hearing.

In both W.Ps.

For Petitioner	:	Mr.S.Karunakar
For Respondent	:	Mr.R.Suresh Kumar Additional Government Pleader

COMMON ORDER

The primordial contention of the learned counsel for the petitioner is that the respondent by passing orders of assessment had accepted some of the reasons as to be satisfactory had dropped certain demands and had reiterated certain of the demands holding that the explanation given by the petitioner was not satisfactory. He would submit that no reasons have been attributed by the respondent as to why the explanation given by the petitioner was not satisfactory. He would draw the attention of this Court to the provisions of Section 73 of the Goods and Services Act, 2017 (hereinafter referred to as “the Act”) and contend that when a representation has been made as a reply to the show cause notice, the officer concerned would have to determine the amount of tax that has to be paid based upon such reply. However, no reasons have been attributed by the respondent in the present case. He would also draw the attention of this Court to the guidelines issued by the Commissioner of State Tax as to how an order should be passed and therefore, he would pray this Court to set aside the orders and remand the matter back to the respondent to pass a reasoned/speaking order as envisaged under Circular No.8/2024 issued by the Commissioner of State Tax, dated 29.08.2024.

2. On the other hand, the learned Additional Government Pleader appearing on behalf of the respondent would submit that there has been clear application of mind by the respondent. For certain of the demands,

the respondent had accepted the explanation given by the petitioner and dropped the demands and in certain other demands, the respondent had not found the explanation satisfactory and reiterated the demand. Therefore, there has been an application of mind, however not supported by reasons. Therefore, he would submit that non-disclosure of reasons would not be a material error for this Court to interfere under Article 226 of the Constitution of India and the same could be challenged before the appellate authority as provided under the Act.

3. I have considered the submissions made by the learned counsel on either side. I have also perused the orders impugned herein.

4. The orders impugned herein express only the satisfaction of the respondent either way. The said orders do not reflect any reasons on which basis such satisfaction had been arrived at by the respondent. Sub-Section (9) of Section 73 of the Act indicates that after such representation being made by the assessee to the show cause notice, the proper officer should determine the tax payable by the assessee. In the

present case, what had been done by the respondent is only expressing his satisfaction either way. There has been no determination of the tax to be paid by the assessee, supported by a reasoning. Circular No.8/2024 relied upon by the petitioner also clearly indicates that the Commissioner had in fact, given detailed guidelines including the rule of passing a speaking order or a reasoned decision. The Commissioner of State Tax had also issued guidelines with relation to the points to be noted while drafting of orders by the proper officer, which include the gist of reasons which are to be recorded in writing. In such view of the matter, I am inclined to hold that the orders of assessment had been made without assigning any reasons, i.e., on what basis such satisfaction had been recorded. Therefore, the orders impugned are set aside and the matter is remitted back to the authority. The respondent shall pass appropriate orders by recording his reasons as to the satisfaction arrived at in respect of each of the demands. Such exercise shall be carried out by the respondent within a period of four weeks from the date of receipt of a copy of this order.

5. In the result, these Writ Petitions are allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

03.12.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes

abr

To

The Commercial Tax Officer,
Munichalai Road, Madurai East,
Commercial Tax Buildings,
Madurai.

K.KUMARESH BABU, J.

abr

W.P.(MD) Nos.28825 and 28826 of 2024

Dated: 03.12.2024