IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-02-2025

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THE HONOURABLE MR JUSTICE KRISHNAN RAMASAMY

WP No. 6434 of 2025 and
WMP.Nos.7069 and 7070 of 2025

M/s.Emgee Infrastructure Holdings India Pvt. Ltd
(Represented by its Director Mr.Ashwin Kumar Madala)
No.9, 7th Street, RV Nagar, Sri Guru Vinayagar Alayam,
Kodungaiyur, Chennai-118.

Petitioner

..Vs..

The Assistant Commissioner (ST),
Kotturpuram Assessment Circle, Second Floor,
Room No.213, Integrated Commercial Taxes
and Registration Department,
Nandanam, Chennai-600 035. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the Respondent in passing the impugned order Reference No.ZD3308241569516 dated 19.08.2024 read with Rectification Order Reference No.ZD331224082263P dated 10.12.2024 passed by the Respondent for the period 2019-2020 and quash the same as it arbitrary, unreasonable and illegal and in violation of principles of natural justice.

For Petitioner : Ms.K.Sharanya Vijay
for Mr.K.Vaitheeswaran

For Respondent : Ms.Amirtha PoonkodiDinakaran
Government Advocate (Taxes)

ORDER

This writ petition has been filed by the petitioner challenging the order of the Respondent dated 19.08.2024 and the rectification order dated 10.12.2024.

2. Ms.Amirtha PoonkodiDinakaran learned Government Advocate(Taxes) notice for the respondents

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. The learned counsel for the petitioner would submit that the petitioner is engaged in engineering, procurement, and construction services and is a registered assessee under GST Act. While so, the petitioner was issued with a Show Cause Notice dated 23.05.2024 and

subsequently impugned order came to be passed by the respondent on 19.08.2024 demanding a sum of Rs.16,17,45,497/- (Rs.8,57,57,397/- towards tax, Rs.6,74,12,363/- towards interest and Rs.85,75,737/- towards penalty) for the Assessment Year 2019-20. On receipt of the said order, it was noted by the petitioner that the same suffered from 'error apparent on the face of the record' as the ITC was getting duplicated as demand under the head of alleged excess availment of ITC in GSTR-3B beyond the cut-off date for filing GSTR-1 and under the head of demand created on the allegation of ITC in GSTR-3B availed in the absence of suppliers not paying the tax. Therefore, immediately after the receipt of the impugned order, the petitioner filed rectification petition highlighting the aforesaid the defects and rectify the same. But the respondent without considering the same has rejected the same. Hence, left with no other alternative the petitioner is before this Court by way of this writ petition.

5. Further, she would submit that in the present case the respondent has passed the impugned order with non application of mind.

That apart, in the rectification petition, the respondent had simply confirmed the demand made in the assessment order without giving any valid reasons. She therefore prays to set aside both the assessment order as well as the rectification order.

6. Today, when the matter was taken up in the morning, the learned Special Government Pleader (Taxes) sought for pass over to get instructions with regard to the duplication and thereafter the matter is taken up at 2.15 P.M.. When the matter was taken up at 2.15 P.M, the learned Government Advocate (Taxes) on instructions would submit that there is a duplication in the impugned order as alleged by the petitioner. She further submitted that the disputed tax liability would comes around Rs.2.18 crores and therefore seeks for appropriate orders.

7. Heard the learned counsel for the petitioner and the learned Government Advocate (Taxes) for the respondent and also perused the materials available on record.

8. Considering the submissions made by the learned counsel for the petitioner as well as the respondent and as the respondent has fairly agreed that there is duplication in the demand, this Court is inclined to set aside the impugned orders dated 19.08.2024 and 10.12.2024 passed by the Respondent. Accordingly, this Court passes the following order:-

(i) The orders impugned herein are set aside and the matter is remanded to the respondent for fresh consideration.

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks thereafter.

(iii) On filing of such reply/objection by the petitioner, the respondent shall consider the same and issue a 14 days clear notice by fixing the date of personal hearing to the petitioner and thereafter, pass appropriate orders on merits and in accordance with law, after hearing the petitioner, as expeditiously as possible,without being influenced by any of the orders of this Court.

KRISHNAN RAMASAMY,J

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9. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are also closed.

25.02.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To

The Assistant Commissioner (ST),
Kotturpuram Assessment Circle, Second Floor,
Room No.213, Integrated Commercial Taxes and
Registration Department,
Nandanam, Chennai- 600 035.

W.P.No.6434 of 2025