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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.34020 of 2024
and
W.M.P.Nos.36839 & 36840 of 2024

M/s.AR Foundations Private Limited,
(Rep by its Managing Director Sri.P.Amarnath Reddy),
Ground Floor, 148 Acropolis, Dr.Radhakrishnan Road,
Mylapore, Chennai 600 004.

... Petitioner

Vs.

The Appellate Deputy Commissioner (ST) – Chennai II,
No.1, PAPJM Buildings, Greams Road,
Thousand Lights, Chennai 600 006

... Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in the impugned order in Form GST APL-02 dated 26.07.2024 in GSTIN No.33AAFCA1661B1ZD and to quash the

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same and to direct the respondent to restore the appeal as the necessary pre-deposit amount has been discharged under Section 107(6) of the CGST/TNGST Act, 2017.

For Petitioner	:	Ms.J.Vamini, for Mr.K.Vaitheeswaran
For Respondent	:	Mr.V.Prashanth Kiran, Government Advocate

ORDER

This writ petition has been filed challenging the impugned order dated 26.07.2024 passed by the respondent.

2. Mr.V.Prashanth Kiran, learned Government Advocate, takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The learned counsel for the petitioner would submit that the petitioner had filed an appeal against the order-in-original dated 26.07.2024 before the respondent. However, the respondent had refused to take the appeal on record by stating that no pre-deposit has been made

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by the petitioner.

4. Further, she would submit that in this case, due to non-availability of facilities to pay the pre-deposit through online for filing appeal against the original order, the petitioner was not in a position to pay the same and hence, the said pre-deposit was voluntarily made by the petitioner through Form GST DRC-03. Subsequently, Form GST DRC-03A was introduced.

5. At this juncture, she referred paragraph Nos.7.1, 8.1 and 8.2 of the Circular No.224/18/2024 dated 11.07.2024 and would submit that even in the said circular, it was clarified that "*the amount paid vide Form GST DRC-03 may be adjusted against the pre-deposit under Section 107 or Section 112 of the CGST Act*". However, without considering the said aspect, the respondent has arrived at conclusion that no pre-deposit was made and refused to take the appeal on record. Hence, this writ petition.

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6. The learned Government Advocate appearing for the respondent would submit that their only apprehension is that as per the tax liabilities, the petitioner was supposed to have paid only a sum of Rs.2,36,738/-, i.e., 10% of the disputed tax amount, as pre-deposit for filing the appeal. However, the petitioner paid a sum of Rs.5,02,780/- through Form GST DRC-03, due to which, the respondent had suspicion that the said amount should have been paid for some other purpose and accordingly, rejected the appeal.

7. In reply, the learned counsel for the petitioner would submit that on 19.03.2024, the petitioner made the payment of pre-deposit of a sum of Rs.5,02,780/-, which is 10% of the total tax liabilities (including interest and penalty), only for the purpose of filing the appeal, however, since there was a technical issue, the appeal was filed on the very next day, i.e., 20.03.2024. Further, she would contend that the said amount is still lying in Form GST DRC-03. Hence, she requests this Court to allow this petition.

8. Heard the learned counsel for the petitioner and the learned

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Government Advocate for the respondent and also perused the materials available on record.

9. In this case, due to non-availability of facilities to pay the pre-deposit through online for filing an appeal against the original order, the petitioner has voluntarily made the said payment of pre-deposit through Form GST DRC-03 on 19.03.2024 and filed their appeal on 20.03.2024. Subsequently, Form GST DRC-03A was introduced vide Notification dated 10.07.2024. Under these circumstances, the appeal filed by the petitioner was rejected by the respondent vide impugned order dated 26.07.2024 by stating that no pre-deposit was made through Form GST DRC-03A.

10. Further, the Circular No.224/18/2024-GST dated 11.07.2024 came to be issued by the respondent. At this juncture, it would be apposite to extract the relevant portion of the said circular, which reads as follows:

"7.1 It has also been noticed that some taxpayers

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have already paid amounts that were intended to have been paid towards a demand, through FORM GST DRC-03. Attention is invited to Notification No. 12/2024- CT dated 10.07.2024, vide which sub-rule (2B) of Rule 142 and FORM GST DRC-03A has been inserted in Central Goods and Services Rules, 2017 (hereinafter referred to as 'CGST Rules), providing for a mechanism for cases where the person liable to pay tax, interest and penalty under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 of CGST Act has made payment of such tax, interest and penalty, inadvertently through FORM GST DRC-03 under sub-rule (2) of Rule 142. In such cases, the said person can file an application in FORM GST DRC-03A, electronically on the common portal, and the amount so paid and intimated through the FORM GST DRC-03 shall be adjusted as if the said payment was made towards the said demand on the date of such intimation through FORM GST DRC-03.

7.2. .....

7.3.....

8.1 Currently, the above-mentioned functionality

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for filing of an application in FORM GST DRC-03A, is not available on the common portal. Therefore, till the time such functionality is made available on the common portal, in respect of cases where an amount of pre-deposit has been inadvertently paid through FORM GST DRC-03 instead of making the said payment through Electronic Liability Ledger-II against the demand created in the said ledger, the concerned taxpayer may intimate the proper officer about the same, and on such intimation, the proper officer may not insist on recovery for the remaining amount payable by the concerned taxpayer, till the time the said functionality of FORM GST DRC-03A is made available on the portal.

8.2 Once the functionality of FORM GST DRC-03A is made available on the portal, the concerned taxpayer may file an application in FORM GST DRC-03A, on the common portal, at the earliest, as mentioned in para 7.1 above and on doing so, the amount paid vide FORM GST DRC-03 may be adjusted against the pre-deposit under section 107 or section 112 of the CGST Act, as the case may be, as detailed in para 7.2 above. However, in case the taxpayer fails to file an application in FORM GST DRC-03A on the common portal, the proper officer may proceed to recover the amount payable as per provisions

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of section 78 and section 79 of CGST Act."

11. A perusal of the above circular makes it clear that the said circular talks about the difficulties faced by the Assesee in payment of pre-deposit and on that aspect, the clarification has been issued by the Department to the extent that the voluntary payment made in Form GST DRC-03 shall be consider as pre-deposit paid through Form GST DRC-03A. Accordingly, the petitioner made the payment of pre-deposit through Form GST DRC-03.

12. As far as the apprehension expressed by the learned Government Advocate appearing for the respondent is concerned, though this Court has already adjourned this matter during the 7 earlier occasions, till date, no verification was made by the respondent. Further, it was submitted by the petitioner that the said amount is still lying in Form GST DRC-03. In such case, if at all if there is any discrepancies, the same shall be verified and reported before this Court by the respondent.

13. In view of the above, this Court is inclined to set aside the

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rejection order passed by the respondent. Accordingly, this Court passes the following order:-

(i) The rejection order dated 26.07.2024 is set aside and the appeal filed by the petitioner is restored. The amount paid by the petitioner through Form GST DRC-03 shall be considered as pre-deposit for filing the appeal.

(ii) The respondent is directed to take the appeal on record and pass appropriate orders on merits and in accordance with law, after providing sufficient opportunity to the petitioner, as expeditiously as possible.

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

06.02.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa
Note: Issue order copy on 07.02.2025.

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To

The Appellate Deputy Commissioner (ST) – Chennai II,
No.1, PAPJM Buildings, Greams Road,
Thousand Lights, Chennai 600 006

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KRISHNAN RAMASAMY.J.,

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