IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.02.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.37278 of 2024
and W.M.P.Nos.40297 & 40298 of 2024

Gem Granites,
Rep by its General Manager, S.Gopal,
78, Cathedral Road,
Chennai 600 086

... Petitioner

Vs.

1.The State Tax Officer,
Royapettah Assessment Circle,
Room No.206, Second Floor,
Farm Village, South Tower,
Nandanam, Chennai 600 035

2.The Assistant Commissioner (ST),
Nanganallur Assessment Circle,
Integrated Commercial Taxes Building,
2nd Floor, Room No.224,
Government Farm Village, Nandanam,
Chennai 600 035.

... Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the files of the 1st respondent herein in GSTIN/33AAAFG2370F1ZY/2019-20 in GST DRC-07 proceedings dated 30.08.2024 and quash the same.

For Petitioner	:	Mr.R.Vasumithran
For Respondent	:	Ms.Amirta Poonkodi Dinakaran, Government Advocate

ORDER

This writ petition has been filed challenging the impugned order dated 30.08.2024 passed by the 1st respondent.

2. Ms.Amirta Poonkodi Dinakaran, learned Government Advocate, takes notice on behalf of the respondents. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. When the matter was taken up for hearing, the learned counsel for the petitioner would submit that though he had sought for larger relief in this petition, he had restricted his relief to the extent of

challenging the impugned order only on the aspect of "security wages". In this regard, he referred the Audit Note No.8 of the impugned order, wherein the "security wages" has been shown as Rs.2,90,28,232/-, for which, the respondent had demanded tax liabilities of a sum of Rs.26,12,541/- as CGST and Rs.26,12,541/- as SGST.

4. Further, he would submit that prior to the passing of impugned order, the aforesaid issue, viz., "Security Wages", was not raised by the respondents either in the show cause notice dated 29.05.2024 or in any manner, due to which, no opportunity was provided to the petitioner to explain their case on the said aspect. Hence, he would contend that in non-application of mind, the 1st respondent had passed the impugned order, which travels beyond the scope of show cause notice issued by the 2nd respondent and requests this Court to set aside the said impugned order to the extent of security wages alone. That apart, he seeks liberty of this Court to file an appeal with regard to all other aspects.

5. In reply, the learned Government Advocate appearing for the respondents would submit that the "Security Wages" will come under the "Administration Expenses", which was mentioned in the show cause notice. In this regard, he referred the Slip No.8 of the show cause notice dated 29.05.2024, wherein the "Administration Expenses" has been shown as a sum of Rs.6,07,17,441/- which includes "Security Wages".

6. Further, he would submit that after the issuance of aforesaid show cause notice, the documents were furnished by the petitioner, out of which, the respondents had traced out the aspect of "Security Wages". Therefore, the question of failure on the part of the respondent, for not mentioning about the "Security Wages" in the show cause notice, will not arise.

7. However, he would also submit that even if there is any fault on the part of the petitioner, the respondents are supposed to have provided an opportunity of personal hearing to present their case. However, without providing any such opportunity, the impugned order has been

passed by the respondent. Hence, he requests this Court to remand this matter back to the respondents for re-consideration only on the aspect of "Security Wages".

8. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent and also perused the materials available on record.

9. In the case on hand, though the entire impugned order has been challenged, the learned counsel for the petitioner has restricted his relief only with regard to the "security wages" and requested this Court to grant liberty to the petitioner to file an appeal against all the other issues pertaining to the impugned assessment order dated 30.08.2024.

10. As rightly contended by the petitioner, the respondent found "Security Wages" and disputed the same, only upon production of documents by the petitioner. Prior to the furnishing of documents, no such issue was raised either vide show cause notice or in any other

manner. In the show cause notice also, the respondent had stated only with regard to the "Administration Expenses".

11. Normally, if any discrepancy is traced out subsequent to the furnishing of documents, the respondents are supposed to have pointed out the same to the petitioner and provided sufficient opportunity to them to present their case. However, in this case, all of a sudden the respondents had raised the issue on the aspect of "Security Wages" while passing the impugned order, which is a clear violation of principles of natural justice.

12. For the reasons stated above, this Court is of the considered view that it is a fit case to interfere on the aspect of non-providing of any opportunity of personal hearing to the petitioner. Therefore, this Court is inclined to set aside the impugned order only to the extent of "Security Wages". As far as the remaining issues are concerned, as requested by the petitioner, this Court grants liberty to them to file an appeal against the impugned order. However, it is not proper for the petitioner to file

their appeal in a piecemeal manner. Hence, this Court passes the following orders:

(i) The impugned order dated 30.08.2024 is set aside and the matter is remanded to the 1st respondent for fresh consideration only on the aspect of "Security Wages".

(ii) The petitioner shall file their reply/objection along with the required documents, if any, within a period of two weeks from the date of receipt of copy of this order.

(iii) On filing of such reply/objection by the petitioner, the 1st 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, within a period of 2 weeks from the date of personal hearing.

(iv) Thereafter, the petitioner shall file their appeal against the impugned order, including the aspect of "Security Wages", if so advised, within a period of 30 days.

(v) Upon filing of the appeal, the concerned Appellate Authority is directed to take the appeal on record, without insisting for limitation, and pass orders on merits and in accordance with law.

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

10.02.2025

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

To

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