



WEB COPY



W.P.No.8745 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.8745 of 2024

and

W.M.P.Nos.9759 & 9761 of 2024

Vadim Infrastructure Private Limited,
Rep.by its Managing Director, Mr. Rajamanickam Rathinam,
S/o. Mr. Rathinam,
Plot No.110, First Floor,
Samayapuram Nagar Main Road,
Chennai – 600 116.

... Petitioner

Versus

1.The Commercial Tax Officer,
Ekkatuthangal South-II,
Integrated Commercial Taxes and Registration
Department Buildings,
Room No.306. 3rd Floor, Nandanam,
Chennai – 600 035.

2.The State Tax Officer,
Mandaveli Assessment Circle,
4th Floor, Room No.423, Nandanam,
Chennai – 600 035.

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus, to call for the record in under Section 73 of the Tamil Nadu Goods and Services Tax Act, 2017, (TNGST Act) bearing Ref.No.ZD3312231917958 dated 25.12.2023 along with a Summary of the order dated 25.12.2023 on the file of the first respondent for the period July, 2017 to March 2018 and quash the same and further direct the respondents to initiate a fresh proceedings according to the provisions of the TNGST Act, 2017.

For Petitioner : Mr. I. Dinesh,
for Mr. G. Baskar.

For Respondents : Mr. C. Harsha Raj,
Additional Government Pleader (Tax)

ORDER

An order dated 25.12.2021 is subject to challenge in the writ petition.

2. The petitioner is engaged in the business of providing engineering and construction services. Pursuant to the audit of the Books of accounts of the petitioner for assessment period 2017-2018, the petitioner received audit observations. The petitioner also received an intimation dated 08.09.2023. Such intimation was replied to on



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25.09.2023. After issuance of the audit report dated 28.09.2023, a show cause notice was issued on 29.09.2023. Such show cause notice was replied to on 29.11.2023 seeking further time up to 15.12.2023. The impugned order was issued thereafter on 25.12.2023.

3. Learned counsel for the petitioner referred to the notice for conducting audit and the audit observations dated 22.08.2023. He pointed out that the principal observations therein pertain to turnover reconciliation and variation between the GSTR 3B return and Form 26AS. He further submitted that the petitioner responded thereto on 25.09.2023 and pointed out that turnover pertains to the petitioner's business across India under multiple GST registrations. A similar reply was also issued with regard to the comparison between the GSTR 3B return and Form 26AS. Learned counsel pointed out that the petitioner also indicated that there was duplication between the observation relating to turnover reconciliation and comparison of GSTR 3B returns and Form 26AS. By referring to the additional typed set, learned counsel pointed out that the amounts demanded towards turnover reconciliation and differences between the GSTR 3B return and Form 26AS constitutes a major portion



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of the tax demand. Therefore, he submits that the petitioner should be provided an opportunity to effectively contest the tax demand.

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4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice on behalf of the respondents. He points out that the petitioner was provided multiple opportunities to contest the tax demand. After referring to the audit observations and audit report, he further submitted that the petitioner did not reply to the show cause notice and provide necessary documents with regard to the turnover from Tamil Nadu. Learned Additional Government Pleader also submitted that the petitioner has a statutory remedy and has not made out a case for interference under Article 226 of the Constitution of India.

5. The focus of the petitioner's challenge is on the confirmation of the tax demand relating to turnover and differences between the GSTR 3B return of the petitioner and Form 26AS. With regard to turnover, the contention of the petitioner is that such turnover is inclusive of turnover from all States. Apart from the GSTR 9 return, the petitioner relied upon the reconciliation statement filed along with the reply dated 25.09.2023.



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On the differences between the GSTR 3B return and Form 26AS, apart from pointing out that the amounts mentioned in the Form 26AS also relate to transactions across India, it was contended that there is duplication between this issue and the issue relating to turnover.

6. In the impugned order, the respondents recorded that the petitioner did not place on record documents pertaining to the turnover from Tamil Nadu. This conclusion cannot be completely disregarded in as much as the petitioner should have placed on record the trial-balance relating to Tamil Nadu and supported it with a certificate from a Chartered Accountant. However, it appears *prima facie* that the tax demand was confirmed against the petitioner by taking into account the total turnover from the petitioner's profit and loss account. It also appears *prima facie* that there could be duplication as between the head relating to turnover and the head relating to the differences between the GSTR 3B return and Form 26AS. In these circumstances, it is just and appropriate that the petitioner be provided another opportunity, albeit by putting the petitioner on terms.



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7. Learned counsel for the petitioner submits that the petitioner is willing to remit 10% of the disputed tax demand relating to all heads of claim other than turnover reconciliation and differences between the GSTR 3B return and Form 26AS. As regards these two heads, he submits that the petitioner is willing to remit 5% of the disputed tax demand.

8. For reasons set out above, the impugned order is set aside on the following terms:

(i) As agreed to by the petitioner, the respondents are permitted to appropriate 10% of the disputed tax demand relating to all heads of demand, other than turnover reconciliation and difference between the GSTR 3B return and Form 26AS, from the bank account of the petitioner, which was attached. As regards the tax demand relating to turnover reconciliation and difference between GSTR 3B returns and Form 26AS, the respondents are permitted to appropriate 5% of the tax demand from the aforesaid bank account.

(ii) Upon realisation of the above amounts, which shall be retained subject to the outcome of the remanded proceedings, the attachment of the bank account shall stand raised.



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9. The petitioner is also permitted to file a reply along with all supporting documents within three weeks. Upon receipt of the petitioner's reply, the second respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within two months from the date of receipt of the petitioner's reply.

10. W.P.No.8745 of 2024 is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are also closed.

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Index : No
Speaking Order : Yes
Neutral Case Citation: No

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