

W.P.No.8153 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 27.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.8153 of 2024 and
W.M.P.Nos.9102, 9103 & 9105 of 2024

DSV Air and Sea Private Limited,
Door No.2, Chetpet, Harrington Road,
Chetpet, Chennai, Tamil Nadu-600 031,
Represented by its Authorised Representative,
Mr.Raghavan T.V.N.

...Petitioner

Vs.

1.State of Tamil Nadu,
Represented by its Secretary,
Secretariat, Fort St. George,
Chennai-600 009.

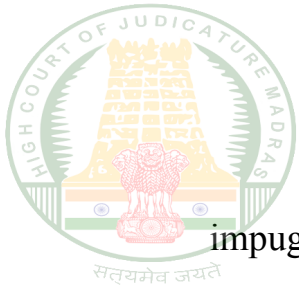
2.The Deputy State Tax Officer-1,
Valluvarkottam Assessment Circle,
Station No.10, Palaniappa Maligai,
4th floor, Greams Road,
Chennai-600 006.

3.Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of

India to issue a Writ of Certiorari calling for the records pertaining to the



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impugned Notice No.33AACCD3848A1Z6/2017-2018 dated 30.09.2023

and the consequent impugned order RFN No.MA331223222126K dated

31.12.2023 issued by 2nd respondent and quash the same.

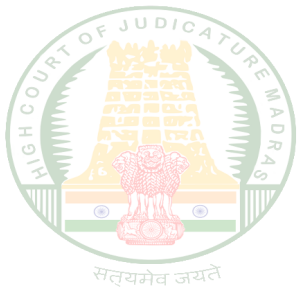
For Petitioner : Mr.Prasad Paranjape
for Mr.Karthik Sundaram

For Respondents : Mr.C.Harsha Raj,
Additional Govt. Pleader (T)

ORDER

An order dated 31.12.2023 is challenged *inter alia* on grounds that the impugned order travelled beyond the scope of the show cause notice and the entire trade payables of the petitioner were subject to GST.

2. The petitioner is a registered person under applicable GST enactments in the State of Tamil Nadu. Pursuant to an audit and the submission of audit report dated 26.09.2023, proceedings were initiated against the petitioner by issuing a show cause notice dated 30.09.2023. According to the petitioner, such show cause notice was limited to the proposed tax of Rs.43,66,708.14. The petitioner replied to such show cause notice on 30.10.2023. The impugned order was issued in the above facts and circumstances on 31.12.2023.



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3. Learned counsel for the petitioner invited my attention to the show cause notice at page no.137 of the paper book and contended that the aggregate tax proposed therein was Rs.43,66,708/-. In contrast, he submits that the tax liability confirmed under the impugned order is in excess of Rs.90 crores. By referring to the findings of the respondents on trade payables, learned counsel submits that the total trade payables of Rs.85,58,12,375/- was treated as a taxable supply and that GST was imposed thereon. He also points out that the petitioner had replied to the show cause notice and stated that Input Tax Credit (ITC) was availed in accordance with law by paying for supplies received from the respective supplier within the specified 180 day period. In spite of such reply, he submits that the respondents imposed GST on the total trade payables and that the impugned order is vitiated on that account. Even with regard to the imposition of GST on inward supplies on which taxes were to be paid on reverse charge basis and ITC availed on import of services, learned counsel contends that the impugned order contains no reasons for recording the conclusion that the reply of the petitioner is not acceptable.

4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice for the respondents. By referring to the show cause notice,

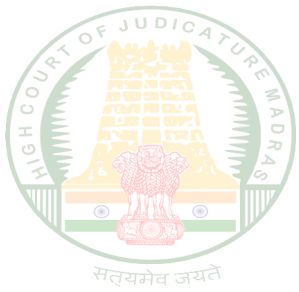


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he points out that the show cause notice set out each discrepancy and the proposed tax liability in relation thereto. Therefore, he contends that the amount mentioned in the table at page no.137 of the paper book cannot be treated as the amount in respect of which the petitioner was called upon to show cause. He further submits that the petitioner has an appellate remedy and and that no case is made out for interference under Article 226 of the Constitution of India.

5. The focus of the petitioner's challenge is the imposition of GST on trade payables. It appears that the petitioner operates across India and the total trade payables were taken by the respondents from the financial statements of the petitioner. In the reply to the show cause notice, the petitioner had explained that the statutory requirements with regard to availment of ITC had been fulfilled by making payments for goods or services received by the petitioner within the time limit specified in that regard. The petitioner also adverted to returns filed in Form GSTR 1 and GSTR 3B in that regard.

6. In the light of the petitioner's response, the conclusion in the impugned order that GST is payable on the total taxable supply as per the financial statements of the petitioner appears *prima facie* to be untenable.



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7. Even with regard to the issues relating to inward supplies on

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which taxes were to be paid on reverse charge basis and ITC availed on import of services, there is a case for more detailed reconsideration. These facts and circumstances warrant interference with the impugned order, albeit by putting the petitioner on terms. On instructions, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand provided the demand in respect of trade payables is excluded therefrom.

8. Since it was concluded earlier that the findings with regard to imposition of GST on trade payables by treating the total tax payables as taxable supplies is *prima facie* untenable, the petitioner shall remit 10% of the disputed tax demand pertaining to all the other heads of demand under the impugned order as a condition for remand.

9. For reasons set out above, the impugned order is quashed subject to the condition that the petitioner remits 10% of the disputed tax demand under all heads, except trade payables, within two weeks from the date of receipt of a copy of this order. Subject to the receipt of 10% of the disputed tax demand as indicated above, the 2nd respondent is



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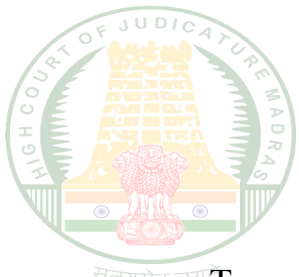
directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order after duly considering all the petitioner's contentions within two months, and all contentions are left open to the petitioner.

10.The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

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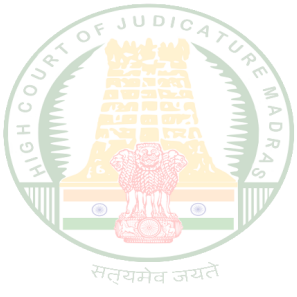
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