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W.P.No.5554 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.5554 of 2024
and W.M.P.Nos.6148 & 6150 of 2024

M/s.Ralco Synergy Pvt. Ltd.
(Represented by its Director Shri.Raju Sureka)
4, A Wing, 6th Floor,
Gemini Parsn Manere,
No.442/602 Anna Salai,
Chennai 600 006.

... Petitioner

-vs-

1.The Joint Commissioner of State Tax
Intelligence - I,
No.1, PAPJM Buildings,
Greams Road,
Chennai 600 006.

2.The State Tax Officer,
Group X, Intelligence - I,
No.1, PAPJM Buildings,
Greams Road, Thousand Lights,
Chennai 600 006.

... Respondents

(R2 has impleaded suo motu by Court on 05.03.2024)

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records of the respondent in passing the impugned order bearing GSTIN / 33AACCR6880N1ZV / 2017-18 dated 23.12.2023 and quash the same as the same lacks jurisdiction and has been passed in contravention of clause (b) of sub-section (2) of Section 6 of the TN SGST Act and Section 75(4) of the GST Acts, and also in violation of Articles 19(1) and 265 of the Constitution.

For Petitioner : Mr.G.Natarajan

For Respondent : Mr.T.N.C.Kaushik, AGP (T)

ORDER

An assessment order dated 23.12.2023 is challenged primarily on the ground of breach of principles of natural justice and lack of jurisdiction.



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WEB COPY 2. Pursuant to an inspection carried out by the respondent in November 2022, an intimation in Form DRC-01A was issued to the petitioner in January 2023. In response thereto, the petitioner sought further time for issuing a reply. This was followed by the show cause notice and the impugned assessment order.

3. Learned counsel for the petitioner referred to paragraph 4 of the affidavit and pointed out that the tax imposed under serial nos.2, 10 and 11 thereof is based on transactions carried out by the petitioner on an all India basis. For instance, he points out that the turn over relating to Tamil Nadu was only Rs.2.7 Crores, whereas the assessing officer has erroneously taken the total turn over and imposed tax on the difference between the all India turn over and the declared turn over. With reference to serial no.11 thereof, he submits that the total expenditure of the petitioner on all India basis was



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taken as the amount on which GST should be imposed on reverse charge basis. Therefore, he contends that the impugned assessment order calls for interference not only on the ground of lack of jurisdiction but also on the ground of non-application of mind.

4. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice on behalf of the respondent. At the outset, he points out that the State Tax Officer was not made a party to the writ petition. Secondly he points out that the assessment order was preceded by an intimation and show cause notice and that the assessing officer had no choice but to confirm the proposals since the petitioner did not participate in proceedings and contest the tax demand.

5. Since an objection was raised that the State Tax Officer was not arrayed as a party, he is impleaded suo motu as the second



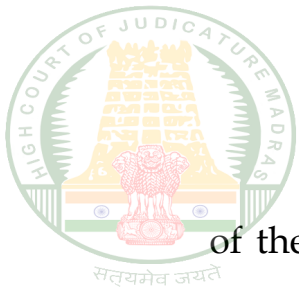
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respondent. The Registry is directed to issue the order copy after

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carrying out the amendment in the petition. On examining the impugned assessment order, it is noticeable that the assessing officer has taken into consideration the closing balance of creditors on all India basis. Similarly, based on the profit and loss account of the petitioner, the total revenue and expenditure of the corporate entity were made the basis for imposing GST. These conclusions clearly reflect non-application of mind. At the same time, it should be recognized that an intimation and show cause notice preceded the assessment order. There is also a time lag of about two months between the show cause notice and the assessment order. Therefore, it follows that the petitioner was negligent in not responding to the show cause notice and participating in proceedings.

6. On instructions, learned counsel for the petitioner submits that the petitioner is ready and willing to remit a reasonable portion



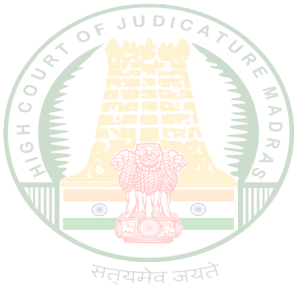
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of the impugned tax demand as a condition for remand. However,

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he points out that 10% of the total disputed tax demand would be excessive in as much as this includes the all India turn over.

7. Therefore, the impugned assessment order is quashed subject to the condition that the petitioner remits 5% of the disputed tax demand as a condition for remand. The petitioner is also permitted to file a reply to the show cause notice within a maximum period of *two weeks* from the date of receipt of a copy of this order along with 5% of the disputed tax demand. Subject to receipt of the reply and upon being satisfied that 5% of the disputed tax demand is received, the assessing officer is directed to provide a reasonable opportunity, including a personal hearing, and issue a fresh assessment order in accordance with law within a maximum period of *two months* thereafter.



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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

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Intelligence - I,
No.1, PAPJM Buildings,
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2.The State Tax Officer,
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SENTHILKUMAR RAMAMOORTHY,J

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