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W.P.No.19733 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2024

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THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.19733 of 2024 &
W.M.P.No.21614 of 2024

M/s.Ohm Sakthi Blue Metals,
Rep. by its Proprietor Mr.K.Velmurugan,
Door No.33/2, Udaiyar Street,
Thollamur,
Villupuram District - 604 304.

... Petitioner

Vs.

The Superintendent of GST & Central Excise,
Office of Superintendent of GST & Central Excise,
Villupuram Range, Villupuram Division,
Old Telephone Exchange Building,
BSNL Campus, Hospital Road,
Villupuram - 605 602.

... 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 of the show cause notice No.22 of 2024-Supdt, dated 16.05.2024 and quash the same.

For Petitioner : Dr.A.Thiyagarajan
Senior Counsel
For Mr.D.Senthilkumar

For Respondent : Mr.Rajendran Raghavan
Standing Counsel



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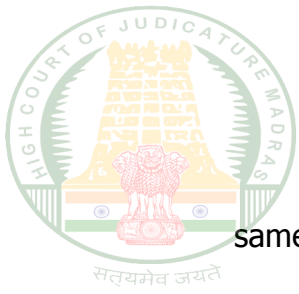
ORDER

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By consent the writ petition is taken up for final disposal at the stage of admission itself.

2. The case of the petitioner is that the respondent issued a notice on 25.01.2024 for the financial year 2019-2020, raising demand of tax at Rs.3,46,866/- along with interest, stating that the petitioner filed GSTR 3B for September, 2020, with one day delay. According to the petitioner, due to COVID-19, the delay was caused and they filed objections to the notice on 19.02.2024. However, on 22.03.2024, the respondent issued a Form GST DRC 01A proposing to levy the very same amount of tax and directing the petitioner to pay the same with applicable interest, by 05.04.2024, failing which, show cause notice will be issued under section 73(1) of the GST Act for reversal of ITC. Feeling aggrieved, the petitioner filed Writ Petition No.9811 of 2024, declaring the provisions of Section 16(4) of the CGST/TNGST Act as unconstitutional as it is manifestly arbitrary and the same is pending consideration. In such circumstances, the respondent issued a show cause notice dated 16.05.2024 and notice for personal hearing on 26.06.2024. While so, the petitioner filed its detailed reply on 29.06.2024, which was served on the respondent on 03.07.2024. Without considering the

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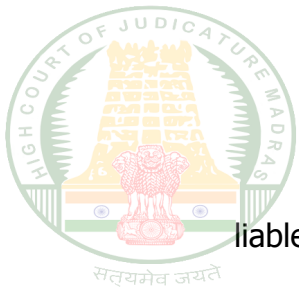
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same, the respondent issued another notice on 04.07.2024 directing the petitioner to appear for personal hearing on 15.07.2024 at 4.20 pm.

Therefore, the petitioner is before this court with the present writ petition to quash the show cause notice dated 16.05.2024 issued by the respondent.

3.The learned senior counsel for the petitioner submits that the demand is raised due to one-day delay in filing GSTR-3B for September 2020, which according to the petitioner, was caused on account of COVID-19 pandemic. Without condoning the said delay, the respondent initiated the proceedings under Section 16(4) of the CGST/TNGST Act, 2017. It is further submitted that Section 16(4) is only procedural which is directory and not mandatory. He also submits that the 53rd GST Council, on 22.06.2024, recommended extending the deadline for availing ITC on any invoice or debit note under section 16(4) of the CGST Act and this extension applies to any GSTR 3B returns filed for the financial years 2017-18, 2018-19, 2019-20, and 2020-21, with the new deadline deemed to be 30.11.2021 and to facilitate this extension, the Council also recommended a retrospective amendment to section 16(4) of the CGST Act, with effect from 01.07.2017. Thus, according to the learned senior counsel, if the proposed amendment came into effect, the petitioner is entitled to get the said statutory benefit under the Amended Act and consequently, the show cause notice issued by the respondent is

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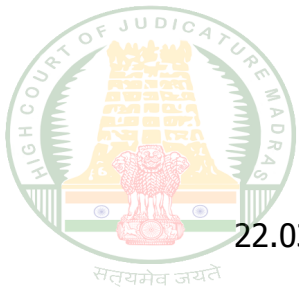
liable to be set aside. In support of his submission, he placed reliance on the order dated 29.07.2024 passed by this court in WP(MD)No.12218 of 2022 [Tvl.Vectra Computer Solutions v. Commissioner of Commercial Taxes and others]. Stating so, the learned senior counsel sought to allow this writ petition.

4. On the other hand, the learned Standing Counsel would submit that the demand is valid and that the delay in filing GSTR-3B, even if one day, falls squarely within the provisions of Section 16(4) of the CGST/TNGST Act, 2017. He further contends that the provision is mandatory, not merely procedural, and that the petitioner cannot claim input tax credit beyond the statutory period. Therefore, the learned counsel prayed for dismissal of this writ petition.

5. Heard the learned counsel on either side and perused the materials available on record.

6. Admittedly, the petitioner after availing ITC, filed its GSTR 3B for September, 2020, on 23.10.2020, i.e., with a delay of one day. Though the petitioner stated that due to covid-19 situation, the delay had occurred, the respondent refused to accept the same and issued Form GST DRC 01A on

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22.03.2024, proposing to levy tax along with applicable interest and directing the petitioner to pay the same by 05.04.2024. On the failure of the petitioner to pay the amount demanded, the respondent initiated section 73(1) proceedings and issued the show cause notice dated 16.05.2024 which is impugned herein. It is seen from the records that the GST Council in its 53rd meeting, recommended to extend the deadline for filing GSTR-3B returns for the financial years 2017-18, 2018-19, 2019-20, and 2020-21 and the said extension applies retrospectively from 01.07.2017. In the light of the same, the case of the petitioner, that too, one day delay in filing GSTR 3B, deserves for consideration. However, the respondent refused to condone the delay and also proposed to reverse the ITC under section 73(1) of the GST Act, which in the opinion of this court, is detrimental to the interest of the petitioner and is hence, liable to be set aside.

7. Accordingly, the show cause notice dated 16.05.2024 passed by the respondent is set aside and this writ petition stands allowed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

08.08.2024

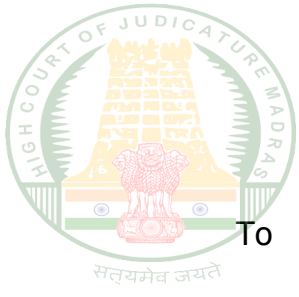
Speaking/Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

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The Superintendent of GST & Central Excise,
Office of Superintendent of GST & Central Excise,
Villupuram Range, Villupuram Division,
Old Telephone Exchange Building,
BSNL Campus, Hospital Road,
Villupuram - 605 602.



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KRISHNAN RAMASAMY, J.

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