IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.14181 of 2021
and W.M.P. No.15061 of 2021

M/s.MSR Polymer and Paper Cups,
Represented by its Proprietor,
R.Janaki, (68/F),Senior Citizen,
R.S.No.57/2B, G.M.R.Nagar,
Mangalam Main Road, Puducherry. ..Petitioner

Vs.

The Additional Deputy Commercial Tax
Officer-GD-III,
Commercial Taxes Department,
Puducherry. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the Respondent herein in impugned notice No.34 AMAPJ7313FIZI/2020-21/DCTO-GD-III dated 26.05.2021 quashing the same.

For Petitioner : Mr.P.Suresh

For Respondent : Mrs.G.Djearany
Government Advocate (Pondicherry)

ORDER

The present writ petition is filed challenging the order of the Respondent for the period from July 2017 to January 2018 on the basis of certain discrepancies noticed during the course of inspection carried out by the officers of the Enforcement Wing on 10.02.2018.

2. During the course of inspection, the following defects were noticed:

a. Supply of poly bags without issuing proper invoices.

b. Not accounting the poly bags that are despatched through lorry parcel service.

c. Not maintaining proper accounts.

2.1. On the basis of the said defects, a notice was issued on 13.01.2021 and documents were called for, to verify whether the petitioner had issued tax invoices for the supplies amounting to Rs.4,06,24,729/-. The authorised representative had appeared on 14.12.2020 and produced various documents. Thereafter, the petitioner submitted its reply on 24.02.2021. On consideration of the above reply filed by the petitioner, the impugned order dated 26.05.2021 came to be passed wherein it was found that on perusal of the supply invoices issued by the petitioner revealed that none of the invoice contained delivery challan. On the basis of the same it was found that the tax payer has not issued tax invoices to the supply effected and assessment was made.

3. At the outset, as a preliminary objection, it is submitted by the learned counsel for the petitioner that the impugned order is appealable and does not suffer from any infirmity warranting interference under Article 226 of the Constitution of India rather the legality or otherwise of the assessment order requires investigation into disputed questions of fact, an exercise which does not normally fall within the realm of Article 226 of the Constitution of India.

4. It is trite law that whenever there is an alternate remedy, this Court shall be loathe in interfering under Article 226 of the Constitution of India and there is no case made out that this case falls under the exception carved out to the rule of alternate remedy for exercise of

discretion under Article 226 of the Constitution of India.

5. In view of the above, this writ petition stands dismissed, however, the petitioner is granted liberty to file an appeal within a period of 6 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

28.02.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
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MOHAMMED SHAFFIQ, J.

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To:
The Additional Deputy Commercial Tax
  Officer-GD-III,
Commercial Taxes Department,
Puducherry.

W.P. No.14181 of 2021

28.02.2024