IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.Nos. 12652 & 12654 of 2024
and
W.M.P.Nos. 13804, 13805, 13809 & 13810 of 2024

Mohanarangan Veerappan ...Petitioner
[in both WPs]

Versus

The Assistant Commissioner (ST) (FAC)
Vadapalani Assessment Circle,
Greams Road, Annex Building
Chennai – 600 006.

...Respondent
[in both WPs]

Prayer in WP.No.12652 of 2024:

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari by calling for the records culminating into Order dated 07.11.2023, bearing GSTIN/33AEZPM6889G1ZK/2017-18 and to quash the same.

Prayer in WP.No.12654 of 2024:

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari by calling for the records culminating into Order dated 07.11.2023, bearing GSTIN/33AEZPM6889G1ZK/2018-19 and to quash the same.

<u>In both Writ Petitions:</u>

For Petitioner : Mr.Praveen S.Kumaar

For Respondent : Mr.T.N.C. Kaushik
Additional Government Pleader

<u>COMMON ORDER</u>

The present writ petition is filed challenging the impugned order passed by the respondent dated 07.11.2023 relating to the assessment year 2017-18.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of metal scraps and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2017-18, the petitioner filed its returns and paid the appropriate taxes. On verification of returns in GSTR-1, GSTR 2A and GSTR 3B and other records, it was noticed that the petitioner has claimed excess ITC on the basis of supplies made by the dealers whose registration

certificates were cancelled / return defaulters / tax non-payers.

3. It is submitted by the learned counsel for the petitioner that a notice in DRC-01 was issued on 29.09.2023 followed by reminder notice dated 02.03.2023. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies.

4. The learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of **Sree Manoj International Vs. Deputy State Tax Officer in W.P.No.10977 of 2024 dated 25.04.2024**, to submit that this court has remanded the matter back in similar circumstances subject to payment of 10% of the disputed taxes.

5. It was further submitted that the petitioner is ready and willing to pay 10% of the disputed tax and that they may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the

learned Special Government Pleader appearing for the respondent does not have any serious objection.

6. By consent of both parties, the writ petition stands allowed on the following terms:

a) The impugned order dated 07.11.2023 is set aside.

b) The petitioner shall deposit 10% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondent, within a period of four weeks from the date of receipt of a copy of this order.

c) If any amount has been recovered or paid out of the disputed taxes, including by way of pre-deposit in appeal, the same would be reduced/adjusted, from/towards the 10% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 10 % of disputed taxes to be paid, if any, within a period of one week from the date of receipt of a copy of this order. The petitioner shall deposit such remaining sum within a period of three weeks from such intimation.

d) The entire exercise of verification of payment, if any, intimation of the balance sums, if any, to be paid for compliance with the direction of payment of 10% of the disputed taxes, after deducting the sums already paid and payment by the petitioner of the balance amount, if any, on intimation in compliance with the above direction shall be completed within a period of four weeks from the date of receipt of copy of this order.

e) Failure to comply with the above condition viz., payment of 10% of disputed taxes within the stipulated period i.e., four weeks from the date of receipt of a copy of this order shall result in restoration of the impugned order.

f) If there is any recovery by way of attachment of Bank account or garnishee proceedings, the same shall be lifted /withdrawn on complying with the above condition viz., payment of 10 % of the disputed taxes.

g) On complying with the above condition, the impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of four (4) weeks from the date of receipt of a copy of this order along with supporting documents/material. If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. It is made clear that if the above conditions viz., 10% of disputed taxes is not complied or objections are not filed within the stipulated period, four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

7. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

07.11.2024

MSM
Index : Yes/No
Neutral Citation : Yes/No
Speaking Order : Yss/no

MOHAMMED SHAFFIQ, J

MSM

To
The Assistant Commissioner (ST) (FAC)
Vadapalani Assessment Circle,
Greams Road, Annex Building
Chennai – 600 006.

W.P.Nos. 12652 & 12654 of 2024

07.11.2024