IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No. 31916 of 2024

and

W.M.P.No. 34660 of 2024

M/s. Mithra Stores
GSTIN : 33A/BEFM0247/J1ZH
Represented by its Partner G.P. Senthilvel
at No. 35/21, Station Road
Villivakkam, Chennai – 600 048. …Petitioner

Versus

1.The Deputy Commissioner (ST)
North-III, Chennai-3.

2.The Deputy State Tax Officer-II
Villivakkam Assessment Circle
Nos.15 & 16, 100 ft Road
Malligai Avenue, Kolathur
Chennai-600 099.

3.The Deputy Commissioner (GST Appeal)
Chennai-600 001. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus calling for records relating to the impugned order dated 08.04.2024 passed by the second respondent in GSTIN: 33ABEFM0247J1ZH and quash the same and consequentially direct the 3rd respondent i.e., The Deputy Commissioner (GST APPEAL), Chennai - 600 001, to condone the delay in preferring the appeal.

For Petitioner	:	Mr. Babu Rangasamy For M/s. Babu Rangasamy Associates
For Respondents	:	Mr. G. Nanmaran Special Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 08.04.2024 relating to the assessment year 2018-19.

2. The petitioner is engaged in the business of a departmental store by name M/s.Mithra Stores. The petitioner is a registered dealer under Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. However, on examination of the information furnished in the return under various heads and also the information furnished in GSTR-01, GSTR2A, GSTR-3B and other records, the following defects were noticed:

i) The tax on outward supplies under declared on reconciliation of date in GSTR-09

ii) Input tax credit to be recovered on non-business transactions and exempt supplies

iii) Ineligible Input tax credit

2.1. Pursuant thereto, a show notice was issued in DRC 01 to the petitioner on 23.12.2023 and reminder on 23.03.2024. However, the petitioner had neither filed its reply nor paid the appropriate taxes. Hence, the impugned order came to be passed, confirming the proposal.

3. It is submitted by the learned counsel for the petitioner that neither the show cause notice nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded in the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. It is further 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 ***M/s.K.Balakrishnan, Balu Cables vs. O/o. the Assistant Commissioner of GST & Central Excise in W.P.(MD)No.11924 of 2024 dated 10.06.2024***. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and

that he 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.

5. By consent of parties, the writ petition stands disposed of on the following terms:

a) The impugned order dated 08.04.2024 is set aside

b) The petitioner shall deposit 25% 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 25% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 25 % 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 25% 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 of 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 25% 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 25 % 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., 25% 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.

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

06.11.2024

Speaking Order : Yes/No
Neutral Citation : Yes/No
MSM

To

1.The Deputy Commissioner (ST)
North-III, Chennai-3.

2.The Deputy State Tax Officer-II
Villivakkam Assessment Circle
Nos.15 & 16, 100 ft Road
Malligai Avenue, Kolathur
Chennai-600 099.

3.The Deputy Commissioner (GST Appeal)
Chennai-600 001.

MOHAMMED SHAFFIQ, J

MSM

W.P.No. 31916 of 2024

06.11.2024