IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.32722 of 2024
and
W.M.P.Nos.35559 and 35560 of 2024

Tvl.Ayser Plastic and Helmets / Ayser Aqua
Rep. by its Proprietor,
Mr.Varusai Mohamed Satham Usen
No.387/2, Raj Street
Karanaiputhuchery, Urapakkam,
Kancheepuram,
Tamil Nadu 603 202. ..Petitioner

Vs.

The Assistant Commissioner (ST)
Thirukazukundram Assessment Circle,
No.42, Wahab Nagar,
Thirukazukundram,
Tamil Nadu 603 109. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus calling for the records of the respondent in GSTIN: 33EVUPS7029N1ZJ/2017-2018 dated 23.11.2023 and quash the same and consequently direct the respondent to grant an opportunity of personal hearing.

For Petitioner : Mr.M.Desingu

For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader.

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 23.11.2023 relating to the assessment year 2017-18.

2. The petitioner is engaged in the business of buying and selling of used waste plastic bottles. 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. While scrutinizing the petitioner's return, it was found that there were certain discrepancies between GSTR-1 and GSTR-3B. Subsequently, notice was issued in DRC-01A to the petitioner on 08.05.2023 through GST Portal, followed by a Show Cause Notice on 14.06.2023. However, the petitioner had neither filed its reply nor paid the tax amount. Hence, the impugned order came to be passed.

3. The impugned order is challenged on the premise that neither the show cause notices nor the impugned order of assessment has been served by tendering to the petitioner or by registered post, instead it was uploaded in the common portal. It was further submitted that the petitioner was unable to access the common portal and thus unable to participate in the adjudication proceedings.

4. The limited issue that arises for consideration in the impugned order is the alleged mismatch between GSTR-1 and GSTR-3B. 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 between GSTR-1 and GSTR-3B.

5. 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. It is further submitted that there is bank attachment and the same may be lifted, to which, the learned Additional Government Pleader appearing for the respondent does not have any serious objection.

6. In view thereof, the impugned order is set aside and the petitioner shall deposit 25% of the disputed tax within a period of two (2) weeks from the date of receipt of a copy of this order. 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. If the above deposit is not paid or objections are not filed within the stipulated period, i.e., two weeks and four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored. The bank attachment shall be lifted forthwith.

7. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

06.11.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
shk

To

The Assistant Commissioner (ST)
Thirukazukundram Assessment Circle,
No.42, Wahab Nagar,
Thirukazukundram,
Tamil Nadu 603 109.

MOHAMMED SHAFFIQ, J.

shk

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