IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.32692 of 2024
and
W.M.P.Nos.35526 and 35524 of 2024

P.E.Kavitha,
W/o, Elangovan,
Proprietrix of Ambiga Industries,
S.F.No:23/1H3B, Tholur,
Namakkal 637 001. ... Petitioner

Vs.

1. The Assistant Commissioner (ST),
   Commercial Taxes Department,
   Office of the Assistant Commissioner,
   Namakkal (Rural),
   Namakkal.

2. The Sub Registrar,
   Mohanur,
   Namakkal. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records and quash the order passed by the 1st respondent under Section 73 of

CGST Act in Form GST DRC-07 bearing Ref.No:ZD330424207396K dated:26.04.2024 and consequentially direct the 2nd respondent to remove any attachment created with reference to the above Impugned order under Secion 73 of CGST Act in Form GST DRC-07 bearing Ref No:ZD330424207396K dated 26.04.2024 passed by the 1st respondent within a time frame.

For Petitioner	:	Mr.I.M.Siddartha Ramarajan
For Respondents	:	Mr.G.Nanmaran Special Government Pleader

ORDER

The present writ petition has been filed challenging the impugned order passed by the respondent in Ref.No:ZD330424207396K, dated 26.04.2024 for the assessment year 2018-19, on the premise that the same is made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of manufacturing and trading of fibres and pulses and registered under the GST Act. During the relevant period of 2018-19, the petitioner has filed the returns and paid appropriate taxes. However, on verification of the returns the following mismatch were noticed:

a) Mismatch between GSTR 3B and GSTR 9

b) Mismatch between GSTR-3B and GSTR-2A.

3. It is submitted by the learned Counsel for the petitioner that an intimation in DRC-01 dated 28.12.2023 was issued followed by a reminder dated 05.04.2024. 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 also submitted by the learned counsel for the petitioner that the disputed tax works out to Rs.46,42,658/- and they have already remitted Rs.35,95,104/-. It is further submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, he 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,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25%

of the disputed taxes. The learned counsel for the petitioner would submit that the petitioner has already remitted more than 25% of the disputed taxes and they may be granted an opportunity before the adjudicating authority to put forth their objections to the proposal.

5. Taking into account the peculiar facts of the case, wherein, the petitioner has already remitted more than 25% (almost 70%) of the disputed taxes, this Court is of the view that the petitioner may be granted one final opportunity to put forth his objections, which was not objected to by the learned Special Government Pleader for the respondent.

6. Since, the above order is made on the basis of the statement made by the learned counsel for the petitioner that a sum of Rs.35,95,104/- has been remitted already, the respondent may verify the same. If the statement made by the learned counsel for the petitioner regarding the payment of tax of more than 25% is incorrect, the respondent authority shall intimate the same to the petitioner who shall within 2 weeks from the date of such intimation deposit 25% of disputed taxes. Subject to verification of payment of 25% of disputed

taxes or on payment of 25% of disputed taxes, attachments if any, would be lifted.

7. In view thereof, the impugned order, dated 26.04.2024 is set aside. The impugned order shall be treated as a show cause notice and the petitioner shall file their objections within a period of two (2) weeks from the date of receipt of a copy of this order. If any such objections are filed within the stipulated period, the respondent shall consider the same and pass appropriate orders in accordance with law after affording the petitioner a reasonable opportunity of hearing. If objections are not filed within the stipulated period, i.e., two weeks from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

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

08.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1. The Assistant Commissioner (ST),
   Commercial Taxes Department,
   Office of the Assistant Commissioner,
   Namakkal (Rural),
   Namakkal.

2. The Sub Registrar,
   Mohanur,
   Namakkal.

MOHAMMED SHAFFIQ, J.

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