IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.31707 of 2024 and
W.M.P.Nos.34448 and 34449 of 2024

Thiru Murugesan Mari,
(Proprietor of AMC PLAST TECH INDUSTRIES)
D.No.395/6-2, Ganga Nagar, Bedarapalli, Zuzuvadi,
Hosur 635 126. ..Petitioner

Vs.

The Commercial Tax Officer (ST),
Hosur North -1 Assessment Circle,
Office of the Assistant Commissioner,
Commercial Taxes Building, Second Floor,
Hosur 635 109. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari calling for the records relating to the impugned order bearing No 33AIBPM0194L1ZA along with summary order bearing reference no ZD330424151553N dated 20.04.2024 passed by the Respondent and quash the same as the same being arbitrary, passed in violation of the principles of natural justice.

For Petitioner : Mr.G.Natarajan

For Respondent : Mr.V.Prashanth Kiran,
Government Advocate.

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 20.04.2024 relating to the assessment year 2018-19.

2. The petitioner is engaged in the business of manufacturer of poly bags. The petitioner is a registered dealer under Goods and Services Act. During the relevant period, the petitioner filed its return and paid the appropriate taxes. On examination of the information furnished in the petitioner's monthly return under various heads and also the information furnished in GSTR-01, GSTR-2A, GSTR-3B, E-way bills and other records, the following discrepancies were found viz.,:

i) Under declaration of output tax on reconciliation of GSTR-09

ii)Under declaration of output tax on reconciliation of E-way bill with GSTR 1

iii)Excess claim of ITC on inward RCM supplies in GSTR 3B than the actual reverse charge liability declared in 3.1(d) of GSTR 3B.

iv) Under declaration of ineligible ITC.

Subsequently, a Show Cause Notice in Form DRC-01 was issued to the petitioner on 27.12.2023, followed by reminders dated 18.03.2024, 22.03.2024 and 12.04.2024. A personal hearing was offered on 27.03.2024. However, the petitioner had neither filed its reply nor availed personal hearing. Hence, the impugned order came to be passed, confirming the proposal.

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. It is submitted by the learned counsel for the petitioner that there is overlap of the very same liability, in other words, there is duplication. The learned counsel for the petitioner would then 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 they may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Government Advocate appearing for the respondent does not have any serious objection.

5. 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.

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

05.11.2024

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

To

The Commercial Tax Officer (ST),
Hosur North -1 Assessment Circle,
Office of the Assistant Commissioner,
Commercial Taxes Building, Second Floor,
Hosur 635 109.

MOHAMMED SHAFFIQ, J.

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