IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :11.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.33198 of 2024
and
W.M.P.Nos.35979 and 35981 of 2024

Tvl.Sri Ganapathy Metal
Represented by its Proprietor Mr.Chagnaram,
No.126, Industrial Estate,
Ekkattuthangal,
Chennai 600 032. ... Petitioner

Vs.

The State Tax Officer (ST)/Commercial Tax Officer
Ekkatuthangal Assessment Circle,
Commercial Taxes and Reg. Department (South Tower)
Room No.306, III Floor,
Nandanam, Chennai 600 035. ...Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for records of the impugned order passed in GSTIN: 33AMKPH1068D1ZG/2019-20 dated 05.08.2024 on the file of the Respondent herein along with the consequential DRC-07 Order under Section 73 Ref No. ZD330824036205M dated 05.08.2024 on the file of the Respondent herein and the quash the same as illegal, arbitrary against the principle of natural justice and against the law.

For Petitioner : M/S.J.Poojesh

For Respondent : Ms.Amrita Dinakaran,
Government Advocate.

ORDER

The present writ petition is filed challenging the impugned order dated 05.08.2024, passed by the respondent on the premise that the same was made in violation of principles of natural justice.

2. The petitioner is engaged in supply of Ferrous waste of iron, aluminium, lead, copper and steel scrap and is a registered dealer under the GST Act, 2017. During the relevant period, the petitioner filed its return and paid the appropriate taxes. However, on examination of the information furnished in the return under various heads and also the information furnished in GSTR-01, GSTR-2A, GSTR-3B, E-Way Bills and other records available, the following discrepancies were noticed viz.,

i. Reconciliation of E-way bill turnover with GSTR-09

ii.Excess Input Tax Credit (ITC) claimed on account of non-reconciliation in GSTR-09

iii.Under declaration of Ineligible ITC

Subsequently, an intimation in Form DRC-01 was issued to the petitioner on 23.05.2024, followed by reminders on 24.06.2024, 08.07.2024 and 17.07.2024. Thereafter, personal hearing was offered on 01.07.2024, 15.07.2024 and 26.07.2024. However, the petitioner had neither filed its reply nor availed the opportunity of 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 if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies. The learned counsel for the petitioner would then 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 Government Advocate appearing for the respondent does not have any serious objection.

6. In view thereof, the impugned order dated 05.08.2024 is set aside and the petitioner shall deposit 10% of the disputed tax within a period of four 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 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., four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

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

11.11.2024

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

The State Tax Officer (ST)/Commercial Tax Officer
Ekkatuthangal Assessment Circle,
Commercial Taxes and Reg. Department (South Tower)
Room No.306, III Floor,
Nandanam, Chennai 600 035.

MOHAMMED SHAFFIQ, J.

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