IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.33036 of 2024 and
W.M.P.Nos.35804 and 35805 of 2024

Sunil Ferro and Energy Private Limited
Rep. by its Director
Sanjay Nachrani
House No.11, Jal Vihar Colony,
Telibandha, Rajpur, Chattisgarh. ..Petitioner

Vs.

Assistant Commissioner (ST) (FAC)
Tondiarpet Assessment Circle
Integrated Commercial Taxes Office Complex
Room No.206, No.1275/3, Bridge Road, Vepery,
Chennai 600 003. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari to call for the impugned order of the respondent passed in GSTIN: 33ABFCS2802K1ZH/2022-2023 dated 28.07.2023 and quash the same.

For Petitioner : Mr.K.Saitanya

For Respondent : Mr.T.N.C.Kaushik,
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 28.07.2023 relating to the assessment year 2022-23.

2. The petitioner is engaged in the manufacture and generation of power and is a registered dealer under the Goods and Services Tax Act. During the relevant period, the petitioner had filed its return and paid appropriate taxes. However, during the scrutiny of the petitioner's monthly return, it was found that there was discrepancies between GSTR-3B and GSTR-2B. Subsequently, a notice was issued in DRC-01A to the petitioner on 13.02.2023, followed by DRC-01 on 08.06.2023 for the year 2022-23. However, the petitioner had neither filed its reply nor paid the tax amount. Hence, the impugned order came to be passed.

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 between GSTR-3B ad GSTR-2B.

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. It is further submitted by the learned counsel for the petitioner that they have already remitted the entire disputed tax 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 the entire 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 Additional 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 the entire disputed tax 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 entire disputed taxes is incorrect, the respondent authority shall intimate the same to the petitioner who shall deposit 25% of disputed taxes within 2 weeks from the date of such intimation. Subject to verification of payment of the entire disputed taxes or on payment of 25% of disputed taxes, attachments if any, would be lifted.

7. In view thereof, the impugned order, dated 28.07.2023 is set aside. The impugned order shall be treated as a show cause notice and the petitioner shall filed 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.

06.11.2024

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

<u>MOHAMMED SHAFFIQ, J.</u>

shk

To

Assistant Commissioner (ST) (FAC)
Tondiarpet Assessment Circle
Integrated Commercial Taxes Office Complex
Room No.206, No.1275/3, Bridge Road, Vepery,
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