IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.32628 of 2024
and
W.M.P. Nos.35472 and 35475 of 2024

Mr.Naryanan Balaji
Propreitor of M/s.Mani Hardware and Paints
No.379/ABC, CL Road,
Vaniyambadi, Thirupattur-635 751. ... Petitioner

Vs.

1.The Commercial Tax Officer,
No.4, Bharathiyar Salai, Fort Round Road,
Vellore-632 001.

2.State Tax Officer(Inspection 3).
O/o. The Joint Commissioner (ST) (Intelligence),
Vellore Division, No.4, Bharathiyar Salai,
Fort Round Road, Vellore-632 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the impugned order dated 22.05.2024 issued in Reference No.ZD3305241850698 by the 1st Respondent with respect to year April 2023 to August 2023 and quash the same.

For Petitioner : Mr.Derrick Sam

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order passed by the first respondent dated 22.05.2024 relating to the assessment year 2023-2024.

2. The petitioner is engaged in the business of sales of hardware, paints and allied items. 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. On a comparison of the returns filed, *inter alia* the following discrepancies were noticed:

i) Non-payment of tax due as per Rule 86 B of the Act;

ii) Alleged Stock Difference.

2.1. Subsequently, notices were issued in DRC-01A on 26.12.2023 and DRC-01 on 05.02.2024 through online, followed by reminders on 22.04.2024, 29.04.2024 and 10.05.2024. 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 the notices and

orders were uploaded under the "view additional notices and orders" tab on the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and thus unable to participate in the adjudication proceedings.

4. The issues that arise for consideration in the impugned order are the alleged stock difference and non-payment of tax due as per Rule 86B of the Act. It is 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.

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, to which the learned Government Advocate appearing for the respondents does not have any serious objection.

6. In view thereof, the impugned order dated 22.05.2024 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 respondents 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.

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

04.11.2024

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

To:

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No.4, Bharathiyar Salai, Fort Round Road,
Vellore-632 001.

2.State Tax Officer(Inspection 3).
O/o. The Joint Commissioner (ST) (Intelligence),
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MOHAMMED SHAFFIQ, J.

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