IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.32640 of 2024
and
W.M.P.Nos.35481 and 35483 of 2024

Mr.Narayanan Balaji
Proprietor 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)
   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 this Court to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order dated 20.05.2024 issued in reference No.ZD3305241577276 by the 1st respondent with respect to assessment year 2020-2021.

For Petitioner : Mr.Derrick Sam

For Respondents : Mr.Prashanth Kiran
Government Advocate

ORDER

The present writ petition has been filed challenging the impugned order passed by the respondent in reference No.ZD3305241577276, dated 20.05.2024 for the assessment year 2020-21.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a registered dealer under the GST Act, engaged in the business of sales of hardware, paints and allied items. There was an inspection by the 2nd respondent on 04.09.2023. During the course of such inspection, the following defects were noticed:

a) Difference between 3B and P & L Account Statement.

b) Difference in ITC claim between GSTR-3B and GSTR-2A.

c) Non-filing of GSTR 9C.

d) Tax not paid as per Rule 86B of GST Rules, 2017.

3. It is submitted by the learned Counsel for the petitioner that an intimation in DRC-01A, dated 26.12.2023 was issued followed by a show cause notice. Neither the show cause notices nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded under "view additional notices and orders" column of 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.9,44,306/- and they have already remitted Rs.5,96,174/-. 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% 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.5,96,174/- 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 within a week from the date of receipt of a copy of this order, 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 20.05.2024 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 four 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., four 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.

05.11.2024

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

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   Vellore 632 001.

2. State Tax Officer (Inspection3)
   O/o. The Joint Commissioner (ST) (Intelligence)
   Vellore Division, No.4, Bharathiyar Salai,
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MOHAMMED SHAFFIQ, J.

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