IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.33443 of 2024
and
W.M.P.Nos.36224 and 36225 of 2024

M/s.Westart Communication India Pvt. Ltd.,
Represented by its Director,
Mr.Srinivasan Damodaran,
No.MF-7, CIPET Hostel Road,
Thiru-vi-ka Industrial Estate, Ekkattuthangal,
Chennai-600 032. ...Petitioner

Vs.

The Deputy State Tax Officer-I,
Alandur Assessment Circle,
Integrated Commercial Taxes and Registration
Department (South Tower),
No.352, 3rd Floor, Anna Salai,
Nandanam, Chennai-600 035. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari to call for the impugned proceedings of the respondent passed in GSTIN:33AABCW6231F1ZN/2020-2021 DATED

26.06.2024, order under section 73 dated 26.06.2024 and the summary of the order in Form GST DRC-07 dated 26.06.2024 issued in Reference No.ZD330624328178C and quash the impugned proceedings as passed contrary to the provisions of the CGST/TNGST Act, and also against the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

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

ORDER

The present writ petition is filed challenging he impugned order passed by the respondent dated 26.06.2024 relating to the assessment year 2020-2021.

2. The petitioner is engaged in the business of supplying dust bins to various city corporations and is registered under the Goods and Services Act,2017. During the relevant period of 2020-2021, the petitioner filed its return and paid the appropriate taxes. However, during the scrutiny of the petitioner return, it was found that there was short payment of taxes in GSTR 3B filed by the petitioner, on comparison with GSTR 7 filed by tax deductors.

3. It is submitted by the learned counsel for the petitioner that notices were issued to the petitioner in ASMT10 on 07.09.2023 and Form DRC-01A dated 08.11.2023 followed by a show cause Notice in DRC-01 dated 29.01.2024. Pursuant thereto, Reminder notices along with personal hearing dated 12.02.2024, 04.03.2024 & 20.03.2024 were issued. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. It is also submitted by the learned counsel for the petitioner that neither the show cause notice nor the impugned order of assessment have been served by tendering to the petitioner or by RPAD, instead it was uploaded in the "view additional notices" column of the GST portal, thereby the petitioner was unaware of the initiated proceeding and was thus unable to participate in the adjudication proceeding. It is further submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would able to explain the alleged discrepancies.

4. It is also submitted by the learned counsel for the petitioner that the petitioner had filed an application under Section 161 of the GST Act, dated 14.08.2024 before the respondent seeking to rectify the impugned order dated

26.06.2024 and the same is pending. The learned counsel for the petitioner would then place reliance upon the recent judgement of this court in 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 as 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 90% of the disputed taxes and an opportunity may be granted before the adjudicating authority to put forth their objections to proposal.

5. Taking into account the peculiar facts of the case, wherein, the petitioner has already remitted more than 25% (almost 90%) of the disputed taxes, this court is of the view that the petitioner may be granted one final opportunity to put forth his objection, which was not objected to by the learned Special Government Pleader for the respondent.

6. By consent of parties, the writ petition stands disposed of on the following terms:

a) The impugned order dated 26.06.2024 is set aside

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondent, within a period of four weeks from the date of receipt of a copy of this order.

c) If any amount has been recovered or paid out of the disputed taxes, including by way of pre-deposit in appeal, the same would be reduced/adjusted, from/towards the 25% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 25 % of disputed taxes to be paid, if any, within a period of one week from the date of receipt of a copy of this order. The petitioner shall deposit such remaining sum within a period of three weeks from such intimation.

d) The entire exercise of verification of payment, if any, intimation of the balance sums, if any, to be paid for compliance with the direction of payment of 25% of the disputed taxes, after deducting the sums already paid and payment by the petitioner of the balance amount, if any, on intimation in compliance of the above direction, shall be completed within a period of four weeks from the date of receipt of copy of this order.

e) Failure to comply with the above condition viz., payment of 25% of disputed taxes within the stipulated period i.e., four weeks from the date of receipt of a copy of this order shall result in restoration of the impugned order.

f) If there is any recovery by way of attachment of Bank account or garnishee proceedings, the same shall be lifted /withdrawn on complying with the above condition viz., payment of 25 % of the disputed taxes.

g) 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. It is made clear that if the above conditions viz., 25% of disputed taxes is not complied or objections are not filed within the stipulated period, 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.

02.12.2024

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

To

The Deputy State Tax Officer-I,
Alandur Assessment Circle,
Integrated Commercial Taxes and Registration
Department (South Tower),
No.352, 3rd Floor, Anna Salai,
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MOHAMMED SHAFFIQ, J.,

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