IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.32652 of 2024
and
W.M.P.Nos.35496 and 35494 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 (Inspection3)
   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.ZD330524158180P by the 1st respondent with respect to assessment year 2021-22.

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.ZD330524158180P, dated 20.05.2024 for the assessment year 2021-22.

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 in ITC Claim between GSTR-2A and GSTR-3B.

b) 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.

4. 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 difference in ITC Claim between GSTR-2A and GSTR-3B and Tax not paid as per Rule 86B of GST Rules, 2017.

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,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes.

6. 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 respondent does not have any serious objection.

7. In view thereof, the impugned order dated 20.05.2024 is set aside and the petitioner shall deposit 25% 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 (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. If the above deposit is not paid or objections are not filed within the stipulated period, i.e., two weeks respectively 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

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

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MOHAMMED SHAFFIQ, J.

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