IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 05.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.32878 of 2024
and
W.M.P.Nos.35696 and 35700 of 2024

Tvl.Namasivayam Agency,
represented by its proprietor S.Arumugam,
15/14, 3rd Cross, K.K.Nagar,
Kurinjipadi, Cuddalore 607 302. ... Petitioner

Vs.

Deputy Commercial Tax Officer (ST)
Cuddalore (Taluk), Cuddalore,
Tamil Nadu. ... 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 of Order of Assessment in DRC-07 bearing Reference No:ZD331223093953B in GSTIN/33BCPA7335Q1ZJ/2017-18 dated 14.12.2023 passed by the respondent and to quash the same and to further direct the respondent to lift the Bank Attachment Notice in Form DRC-13 dated 17.05.2024 issued by respondent on the petitioner's banker.

For Petitioner : Mr.R.Ganesh Kanna

For Respondents : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present writ petition has been filed challenging the impugned order passed by the respondent bearing Reference No:ZD331223093953B, dated 14.12.2023 for the assessment year 2017-18.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the wholesale business and is registered under the GST Act and that the petitioner that the petitioner had for the assessment year 2017-18 filed the returns and has also paid the appropriate taxes. During the course of scrutiny of the returns for the tax period 2017-18 it was found that there was a mismatch between GSTR 1 and GSTR 3B.

3. It is submitted by the learned Counsel for the petitioner that an intimation in DRC-01A, dated 27.07.2023 was issued followed by a show cause notice dated 28.08.2023 and reminders dated 15.09.2023 and 19.10.2023. 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 / 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. 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.

5. 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 Special Government Pleader for the respondent does not have any serious objection.

6. In view thereof, the impugned order dated 14.12.2023 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 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., four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand revived.

7. 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
spp

To:

Deputy Commercial Tax Officer (ST)
Cuddalore (Taluk), Cuddalore,
Tamil Nadu.

MOHAMMED SHAFFIQ, J.

spp

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