IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.32832 of 2024
and
W.M.P.Nos.35659 and 35660 of 2024

Tvl. I Fox Renewables and Infra Pvt. Ltd.,
Rep. by its Director, Shri. Gurusamy Sokkalingam,
No.17, UKP Nagar, Gandhi Nagar,
Iswarya Nagar Main Road,
Udumalpet, Tiruppur 642 126. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Udumalpet (South) Assessment Circle,
Udumalpet 642 126. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent connected with impugned order Reference No.33AACCI8286R1ZS/2018-19 dated 24.04.2024 and its consequential summary order No.ZD3304241806198 dated 24.04.2024 in Form GST DRC-07 and quash the same.

For Petitioner : Mr.S.Rajagopalan for
M/s.Srilaw Associates

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 24.04.2024, on the ground that there has been duplication of assessment of taxable value of supplies inasmuch as the very same supplies has been subject to assessment vide proceedings dated 19.10.2022.

2. It is submitted that the above assessment order dated 19.10.2022 deals with the period December 2018 to March 2019, against which an appeal has already been preferred on 21.01.2023, after remitting 10% of the disputed taxes as pre deposit and the appeal is still pending. While the above appeal was pending the present impugned order dated 24.04.2024 has been passed for the period 2018-19 which also covers the period December 2018 to March 2019 thereby levying tax on the very same supplies which shows non application of mind.

3. To the contrary it is submitted by the learned counsel for the respondent that the petitioner despite having issued with form DRC01 dated 26.12.2023 followed by a reminder on 16.04.2024 and personal hearing on 26.01.2024 and 22.04.2024 had neither filed a reply nor availed the opportunity of personal hearing. Thus, the respondent, passed the impugned order confirming the

proposal.

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. The learned counsel for the petitioner 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 Additional Government Pleader appearing for the respondent does not have any serious objection.

6. It is further submitted by the learned counsel for the respondent that though the learned counsel for the petitioner submits that there is an overlap not just with the period but also the issues resulting in levying tax on the very same supplies twice which may require verification by the assessing authority.

7. In the circumstance this Court is inclined to remand the matter back to the respondent subject to the petitioner paying 25% of the disputed taxes arising out of the order dated 24.04.2024. However, while reckoning 25% of the disputed taxes, it is open to the petitioner to make a representation to the respondent authority indicating the turnover which according to them was subject to assessment vide earlier order dated 19.10.2022 and on which taxes has been paid. On the basis of such representation, if it is found that there is an overlap in respect of the issues and the taxable value has already been subject to tax vide earlier order dated 19.10.2022 and if taxes are paid already, the same would stand deducted and 25% would have to be paid only in respect of the demand raised on the taxable value of supplies which are brought to assessment for the first time vide impugned order dated 24.04.2024.

8. With the above direction, the impugned order is set aside. The petitioner may submit a representation within a period of one week from the date of receipt of a copy of this order, the assessing authority shall proceed to indicate the dues within a period of one week thereafter. The petitioner shall pay 25% of the disputed taxes as indicated by the respondent within a period of 2 weeks

thereafter. Failure to comply with any of the above conditions would result in the assessment order getting restored.

9. Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

11.11.2024

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

To:

The Assistant Commissioner (ST),
Udumalpet (South) Assessment Circle,
Udumalpet 642 126.

MOHAMMED SHAFFIQ, J.

spp

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