IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.33707 of 2024
and
W.M.P.No.36496 of 2024

P.G.S.Suppliers,
Represented by its Proprietor, Moorthy G,
No.1/57, Puduvallur, Koppur,
Tiruvallur 602 025.

... Petitioner

Vs.

1. The Assistant Commissioner,
   Thirumazhisai Assessment Circle,
   Avadi Zone, Tiruvallur Division,
   Tiruvallur.

2. The Branch Manager,
   ICICI Bank Limited,
   4/120, Jawaharlal Nehru Road,
   Tiruvallur 602 001.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in Reference No.ZD3304241974937 dated 25.04.2024 and quash the same and consequently direct the respondent to given an opportunity of personal hearing.

For Petitioner : Mr.P.Suresh Babu

For R1 : Mr.TNC.Kaushik
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 25.04.2024, passed by the 1st respondent in Reference No.ZD3304241974937 on the premise that the same is made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of retail and supply of articles of cement, concrete and artificial stone. The petitioner is registered under the GST Act. During the relevant period of 2018-19, the petitioner has filed the returns and paid appropriate taxes under GST Act. However, on examination of the information furnished in the return discrepancy in under declaration of output tax was noticed.

3. Pursuant thereto an intimation in Form DRC01 was issued on 27.12.2023 followed by reminder and personal hearing on 24.04.2024.

However, the petitioner had not responded to any of the above notices / intimation and the impugned order came to be passed. It is submitted by the learned counsel for the petitioner that 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 in the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. 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 discrepancy in under declaration of output tax.

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 Additional Government Pleader appearing for the respondent does not have any serious objection.

6. In view thereof, the impugned order dated 25.04.2024 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 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 restored. It was submitted that pursuant to the impugned order of assessment, recovery proceedings were

initiated and bank accounts have been attached. In view of the order passed herein, the bank attachment shall be lifted forthwith on complying with the above condition i.e., payment of 25% of disputed taxes within a period of four weeks from the date of receipt of a copy of this order.

7. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

20.11.2024

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

1. The Assistant Commissioner,
   Thirumazhisai Assessment Circle,
   Avadi Zone, Tiruvallur Division,
   Tiruvallur.

2. The Branch Manager,
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   4/120, Jawaharlal Nehru Road,
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MOHAMMED SHAFFIQ, J.

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