IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.33822 of 2024
and
W.M.P.No.36640 and 36641 of 2024

M/s.Ashwa Air Technologies,
Represented by its proprietor D.Arumugam,
169, Kamaraj Nagar,
Hosur 635 126. Krishnagiri District.

... Petitioner

Vs.

1. The State Tax Officer (Intelligence),
Inspection - 5, Hosur Division,
Hosur 635 109.

2. The Assistant Commissioner (ST) (FAC),
Hosur (North) - I,
Hosur 635 109.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the connected records pertaining to the impugned proceedings of the 1st respondent herein made in Ref:GSTIN:33AHRPA3166F1ZK/2021-22 dated 01.04.2024 and quash the same.

For Petitioner : Mr.Manoharan S Sundaram

For Respondents : Mr.TNC.Kaushik
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 01.04.2024, passed by the 1st respondent in Ref: GSTIN:33AHRPA3166F1ZK/ 2021-22 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 manufacturer of machinery components and is registered under the GST Act. During the relevant period of 2021-22, the petitioner has filed the returns and paid appropriate taxes. As per the authorization of the Joint Commissioner (ST)(Intelligence) a surprise inspection was conducted at petitioner's place of business on 05.04.2023 and the following discrepancies were found:

(i) Excess claim of ITC availed as per Form GSTR-9.

(ii) Non reversal of ITC for the credit note received.

3. It is submitted by the learned counsel for the petitioner that an intimation in Form DRC-01 on 07.02.2024 and reminder on 07.03.2024. 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 discrepancies. It is further submitted that subsequent to the passing of the impugned order, garnishee proceedings have also been initiated and the same may be withdrawn.

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 01.04.2024 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. In view of the order passed herein, the garnishee proceedings shall be withdrawn 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:

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Inspection - 5, Hosur Division,
Hosur 635 109.

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MOHAMMED SHAFFIQ, J.

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