IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.34805 of 2024
and
W.M.P. Nos.37749 and 37751 of 2024

M/s.Hardware Gallery,
Represented by its Partner,
Mr.Zahir Hussain,
65, Devaraja Mudali Street,
Park Town, Chennai,
Tamil Nadu-600 003. ... Petitioner

Vs.

The State Tax Officer,
Moore Market Assessment Circle,
Integrated Building for Commercial Taxes,
Dept. No.32, Elephant Gate Bridge Road,
(Wall Tax Road), Vepery,
Chennai-600 003. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed by the Respondent against the petitioner vide GSTIN-33AAHFH1100M1ZT/2017-18 dated 26.12.2023 for the assessment year 2017-2018 and quash the same as illegal and against the principles of natural justice.

For Petitioner : Mr.K.M.Malarmannan

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

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 26.12.2023 relating to the assessment year 2017-18.

2. The petitioner is a trader in hardwares and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2017-18, the petitioner filed its returns and paid the appropriate taxes. However, on scrutiny of the input tax availed by the petitioner through GSTR 3B returns filed for the above period with the auto-drafted ITC Statement in Form GSTR-1, GSTR-5 and GSTR-6 of the corresponding suppliers and import data received from ICEGATE, it was noticed that there is mismatch between GSTR 2A and GSTR 3B.

3. It is submitted by the learned counsel for the petitioner that a show cause notice in DRC-01 was issued on 29.09.2023, followed by reminder and personal hearing notice dated 16.11.2023. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. 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 under "view additional

notices" tab on 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, they would be able to explain the alleged discrepancies.

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 they 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 26.12.2023 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. 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 from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

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

26.11.2024

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

To:
The State Tax Officer,
Moore Market Assessment Circle,
Integrated Building for Commercial Taxes,
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(Wall Tax Road), Vepery,

Chennai-600 003.

MOHAMMED SHAFFIQ, J.

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