IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.33218 of 2024 and
W.M.P.Nos.36001 and 36002 of 2024

M/s.Shri Yamuna
Rep. by its Proprietor: Sundaraganesan Sabesan
No.37, M T H Road, Ambattur Estate,
Chennai 600 098. ..Petitioner

Vs.

State Tax Officer
Korattur Assessment Circle,
Integrated Commercial Taxes Building,
Nandanam, Chenai 600 035. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus to call for the records of the respondent and to quash this impugned orders passed by the respondent in GSTIN: 33ABHPS1735L1ZG dated 09.08.2023 and 02.02.2024 to direct the respondent to drop the levy of interest and penalty in this case for the year 2018-19 as per the instructions of the Government of India.

For Petitioner : Mr.C.Baktha Siromani

For Respondent : Mr.T.N.C.Kaushik,
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned orders passed by the respondent dated 09.08.2023 and 02.02.2024 relating to the assessment year 2018-19.

2. The petitioner is engaged in the business of Catering and Guest House accommodation services and is a registered dealer under the Goods and Services Tax Act. During the relevant period, the petitioner had filed its return and paid appropriate taxes. During the course of scrutiny of the petitioner's return for the tax period 2018-19, it was found that there were discrepancies between Form GSTR-01 and GSTR-3B. Subsequently, a notice was issued in DRC-01 to the petitioner on 31.10.2023. However, the petitioner had neither filed its reply nor paid the tax amount. Hence, the impugned orders came to be passed.

3. The limited issue that arises for consideration in the impugned orders is the alleged mismatch between Form GSTR-01 and GSTR-3B. It was submitted by the learned counsel for the petitioner that the petitioner was unable to access the GSTIN portal and was thus unable to participate in the adjudication proceedings. It is submitted by the learned counsel for the petitioner that they have already remitted more than 75% of the disputed tax and they may be granted an opportunity before the adjudicating authority to put forth their objections to the proposal. If the petitioner is provided with an opportunity, he would be able to explain the alleged discrepancies between Form GSTR-01 and GSTR-3B.

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. Taking into account the peculiar facts of the case, wherein, the petitioner has already remitted more than 75% of the disputed taxes, this Court is of the view that the petitioner may be granted one final opportunity to put forth his objections, which was not objected to by the learned Additional Government Pleader for the respondent. It is further submitted that there is bank attachment and the same may be lifted, to which, the learned Additional Government Pleader appearing for the respondent does not have any serious objection.

6. In view thereof, the impugned orders are set aside. The impugned orders shall be treated as show cause notice and the petitioner shall filed their objections within a period of two (2) weeks from the date of receipt of a copy of this order. If any such objections are filed within the stipulated period, the respondent shall consider the same and pass appropriate orders in accordance with law after affording the petitioner a reasonable opportunity of hearing. If objections are not filed within the stipulated period, i.e., two weeks from the date of receipt of a copy of this order, the impugned orders of assessment shall stand restored. The bank attachment shall be lifted forthwith.

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

07.11.2024

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

Note: Issue order copy on 08.11.2024

<u>MOHAMMED SHAFFIQ, J.</u>

shk

To

State Tax Officer
Korattur Assessment Circle,
Integrated Commercial Taxes Building,
Nandanam, Chenai 600 035.

<u>W.P.No.33218 of 2024 and</u>
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