IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.33754 of 2024
and
W.M.P.Nos.36547 and 36550 of 2024

M/s.Vikash Steels,
Represented by its proprietor,
Mr.Harishkumar (M/A 71Yrs)
No.770, T.H.Road,
Tollgate, Chennai 600 008.

... Petitioner

Vs.

The Assistant Commissioner (ST)(FAC),
Tondiarpet Assessment Circle,
Integrated Commercial Tax Office,
Chennai 600 003.

...Respondent

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 records on the file of the respondent and to quash the impugned order dated 28.05.2024 bearing No.33AAAPH4177K1ZS/2022-23 passed by the respondent as arbitrary.

For Petitioner : Mr.J.Ashish

For Respondents : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present writ petition is filed challenging the impugned order in GSTIN:33AAAPH4177K1ZS/2022-23, dated 28.05.2024 passed by the respondent, 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 trading of steel and is registered under the GST Act. During the relevant period of 2022-23, the petitioner has filed the returns and paid appropriate taxes. However, on verification of input tax credit availed, it was seen that the petitioner have effected purchases from the taxpayers whose registration was cancelled for reasons of fraud, Wilful misstatement, suppression of facts, wrongful availment of utilization of ITC or refund / SGSI - Supplies goods or services without issue of invoice.

3. It is submitted by the learned Counsel for the petitioner that a notice in DRC-01A dated 24.12.2023 was issued followed by a show cause notice in

DRC-01 dated 12.03.2024. It is further 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 proceedings. It is also submitted that the petitioner had paid entire taxes which amounts to Rs.4,61,551/-. It is further 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.

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. The learned counsel for the petitioner would submit that the entire taxes have been paid and they may be granted an opportunity before the adjudicating authority to put forth their objections to the proposal.

5. Taking into account the peculiar facts of the case, wherein, the petitioner has already paid the entire tax 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 Special Government Pleader for the respondent.

6. Since, the above order is made on the basis of the statement made by the learned counsel for the petitioner that the entire tax has been remitted already, the respondent may verify the same. If the statement made by the learned counsel for the petitioner regarding the payment of entire tax is incorrect, the respondent authority shall intimate the same to the petitioner within a week from the date of receipt of a copy of this order, who shall within 2 weeks from the date of such intimation deposit 25% of disputed taxes. Subject to verification of payment of 25% of disputed taxes or on payment of 25% of disputed taxes, attachments if any, would be lifted.

7. In view thereof, the impugned order, dated 28.05.2024 is set aside. The impugned order shall be treated as a show cause notice and the petitioner shall filed their objections within a period of four 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., four weeks from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

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

12.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
spp

To

The Assistant Commissioner (ST)(FAC),
Tondiarpet Assessment Circle,
Integrated Commercial Tax Office,
Chennai 600 003.

MOHAMMED SHAFFIQ, J.

spp

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