IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.33875 of 2024
and
W.M.P.Nos.36691, 36693 and 36689 of 2024

M/s.S.P.K.Enterprises
Represented by its Proprietrix
Mrs.S.Boomathy,
Plot No.25, Jaihind Nagar
Manali Express Road,
Chennai 600 057. ..Petitioner

Vs.

1.The Deputy State Tax Officer-I,
Thiruvottiyur Assessment Circle,
32, Integrated Commercial Tax Offices Complex,
Elephant Gate Bridge Road,
Chennai 600 003.

2.The Assistant Commissioner (ST),
Thiruvottiyur Assessment Circle
Integrated Commercial Taxes Building,
Room No.215, Door No.32, 2nd Floor,
Elephant Gate Bridge Road,
Vepery, Chennai 600 003.

3.The Branch Manager,

Indian Bank,
No.6, F-Type Quarters Camp-3
Ennore Thermal Power Station,
Ennore, Chennai 600 057. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari to call for the impugned proceedings of the first respondent in GSTIN:33AERPB0982K1ZC/2018-2019 dated 24.04.2024, the connected Order under section 73 and the summary of the order in Form GST DRC-07 dated 24.04.2024 both issued in Reference No.ZD330424179211P and quash the impugned proceedings as passed contrary to the principles of natural justice and also against the provisions of the CGST/TNGST Act, 2017.

For Petitioner : Mr.P.Rajkumar

For Respondents : Ms.Amrita Dinakaran,
Government Advocate.

ORDER

The present writ petition is filed challenging the impugned order 24.04.2024 on the premise that it traverses beyond the Show Cause Notice thereby denying the petitioner's opportunity to put forth his case.

2. The petitioner is engaged in execution of works contract and is registered under Goods and Services Act, 2017. During the relevant period viz., 2018-19, the

petitioner filed its return and paid the appropriate taxes. However, during the scrutiny of the petitioner's monthly return, it was found that there was a short payment of taxes due to excess claim of Input Tax Credit and alleged mismatch between GSTR-3B vs. GSTR-2A/GSTR-2B. Apart there from the notice also proposed to recover short payment of taxes on the basis of alleged discrepancies between GSTR-1 and GSTR-7. The relevant portion of the notice is extracted hereunder:

"GSTIN:33AERPBO0982K12C/2018-19 O/o the Assistant Commisioner (ST), Ponneri Assessment Circle.

Dated: 10.03.2022

NOTICE

1) Defect: TTC Mismatch

On verification of Form GSTR-3B returns with Form GSTR-2A details. Its noticed that you have excess claimed ITC as detailed below:

Particulars	SGST ITC	CGST ITC
ITC as per GSTR-3B	777993.45	777993.45
ITC as per GSTR-2A ITC mismatch (GSTR-3B – GSTR-2A)	721809.21 56184.24	721809.21 56184.24

Therefore, you are liable to pay the Taxes in account of TVC reversal along with interest payable thereon under Section 50 and a penalty equivalent to 10 percent of the Tax or 10.000 whichever is higher, as per the provisions of Section 73 of the Act as follows:

Tax Type	Tax (Rs)	Penalty (Rs)
CGST	Rs.56180/-	Rs.10000/-
SGST	Rs.56180/-	Rs.10000/-
Interest proposed @ 18%		

2) Defect: Tax not paid on Additional Liability reported in Form GSTR-7

On verification of Form GSTR-1 outward supplies with Form GSTR-7, it is noticed that there is an additional tax liability in respect of GSTR-7 as detailed below:

Return Type	SGST	CGST
GSTR 7	Rs.571144/-	Rs.57144/-
GSTR 1	0/-	0/-
Deference	Rs.571144/-	Rs.571144/-

Therefore, you are liable to pay the short paid Taxes along with interest payable thereon under Section 0 and a penalty equivalent to 10 percent of the Tax or 10,000 whichever is higher, as per the provisions of Section 73 of the Act, as follows:

Tax Type	Tax (Rs)	Penalty (Rs)
CGST	Rs.56180/-	Rs.10000/-
SGST	Rs.56180/-	Rs.10000/-

3) Defect: Interest payable (Late return filing)

Year 2018-19	*SGST interest payable Rs.26011/-*	*CGST interest payable Rs.26011/-*

...........”

Pursuant thereto, a Show Cause Notice in Form DRC-01 was issued to the petitioner on 10.03.2022, followed by reminders on 24.02.2024 for 29.02.2024 and on 22.03.2024 for 27.03.2024. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. Hence, the impugned order came to be passed, confirming the proposal.

3. The impugned order has been passed on 24.04.2024, after granting the petitioner an opportunity of hearing on more one occasion. However, the impugned order has been passed on the premise that there are certain discrepancies between GSTR-3B and GSTR-2A/GSTR-2B and that this results in a differential amount of Rs.804538/- under the CGST and SGST Act, respectively. It is the case of the petitioner that the alleged discrepancies between GSTR-3B vs. GSTR-2A/GSTR-2B were never the subject matter of notice and thus the impugned order cannot be sustained. In this regard, reliance was also placed by the learned counsel for the petitioner on Section 75(7) of the GST Act which reads as under:

"(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice."

4. It was submitted by the learned counsel for the petitioner that inasmuch as the impugned order traverses beyond the Show Cause Notice, the impugned order is liable to be set-aside.

5. The learned counsel for the respondents would submit that in view of the apparent discrepancies between the Show Cause Notice and the order of assessment, the petitioner may submit their response treating the impugned order as Show Cause Notice and submit its reply along with supporting materials within a period of two weeks.

6. In view thereof, the impugned order is set aside and the same shall be treated as a Show Cause Notice. The petitioner shall submit its objections within a period of four (4) 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. It was submitted that pursuant to the impugned order of assessment, recovery proceedings were initiated and petitioner's bank accounts have been attached. In view of the order passed herein, 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.

28.11.2024

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

MOHAMMED SHAFFIQ, J.

shk

To

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