IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.34278 of 2024
and
WMP Nos.37134 and 37138 of 2024

Ayyanar Steel Trading
Represented by its Partner,
N Ellapan : Petitioner

versus

The State Tax Officer,
Alagapuram Circle, Salem,
2nd Floor, Integrated Commercial Taxes
Building, Pitchards Road, Hasthampatty,
Salem-636 007 : Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in GSTIN/33ABGFA9345R1ZU/2021-22 in Form GST DRC-07 proceedings dated 18.03.2024 and quash the same.

For Petitioner : Ms.Siri Chandana K

For Respondent :Mr.G.Nanmaran
Special Government Pleader

ORDER

The present writ petition is filed challenging the impugned order passed by the first respondent dated 18.03.2024 relating to the assessment year 2021-22.

2. The petitioner is engaged in retail business of trading of steel bars and is a registered person under the Goods and Services Act, 2017. During the relevant period, the petitioner filed its return and paid the appropriate taxes. However, during the scrutiny of the petitioner's return, it was found that there was discrepancy in GSTR 3B as tax liability was not discharged at 1% as per Rule 86B of TNGST Rules 2017.

2.1. Subsequently, an intimation was issued to the petitioner in DRC 01A on 19.07.2022, followed by a show cause notice in DRC 01 dated 19.12.2022. Further, personal hearing was offered on 13.07.2023. 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 is challenged on the premise that neither the show cause notices nor the impugned order of assessment have been served by tendering to the petitioner or by registered post, instead it was uploaded in the

common portal. It was further submitted that the petitioner was unable to access the common portal and thus was unable to participate in the adjudication proceedings.

4. 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. The learned counsel for the petitioner would then 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. It is further submitted by the learned counsel for the petitioner that they have already remitted the entire disputed tax and they may be granted an opportunity before the adjudicating authority to put forth their objections to the proposal, which was not objected to by the learned Special Government Pleader for the respondent.

5. By consent of both parties, the writ petition stands disposed of on the following terms:

a) The impugned order dated 18.03.2024 is set aside

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondent, within a period of four weeks from the date of receipt of a copy of this order.

c) If any amount has been recovered or paid out of the disputed taxes, including by way of pre-deposit in appeal, the same would be reduced/adjusted, from/towards the 25% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 25 % of disputed taxes to be paid, if any, within a period of one week from the date of receipt of a copy of this order. The petitioner shall deposit such remaining sum within a period of three weeks from such intimation.

d) The entire exercise of verification of payment, if any, intimation of the balance sums, if any, to be paid for compliance with the direction of payment of 25% of the disputed taxes, after deducting the sums already paid and payment by the petitioner of the balance amount, if any, on intimation in compliance of the above direction, shall be completed within a period of four weeks from the date of receipt of copy of this order.

e) Failure to comply with the above condition viz., payment of 25% of disputed taxes within the stipulated period i.e., four weeks from the date of receipt of a copy of this order shall result in restoration of the impugned order.

f) If there is any recovery by way of attachment of Bank account or garnishee proceedings, the same shall be lifted /withdrawn on complying with the above condition viz., payment of 25 % of the disputed taxes.

g) 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 (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 is made clear that if the above conditions viz., 25% of disputed taxes is not complied or objections are not filed within the stipulated period, four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

6. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

27.11.2024

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

To

The State Tax Officer,
Alagapuram Circle, Salem,
2nd Floor, Integrated Commercial Taxes
Building, Pitchards Road, Hasthampatty,
Salem-636 007

MOHAMMED SHAFFIQ, J.

mrn

W.P. No.34278 of 2024

27.11.2024