IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No. 33959 of 2024
and
W.M.P. Nos. 36774 & 36776 of 2024

Tvl. Universal Fabrics
Rep. by its Proprietor R.Thirumurthy
No.23/12, 1st Street
Ramaiya Colony West
Tiruppur – 641 602. ... Petitioner

Vs.

1.The Deputy Commissioner (ST)
Appellate Authority
Tiruppur-1
Tiruppur.

2.The Assistant Commissioner
Tiruppur North-2 Assessment Circle
Tiruppur. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the orders of the 2nd respondent in Form DRC-07 with reference No. ZD331223206150A, dated 26.12.2023 passed under Section 73 of the TNGST Act, 2017 and quash the same as illegal, devoid of merits and in violation of principles of natural justice.

For Petitioner : Mr.Varun Pandian

For Respondents : Mr.TNC. Kaushik
Additional Government Pleader

ORDER

The present writ petition is filed challenging the order dated 26.12.2023 on the premise that the detailed order has not been served.

2. It is submitted by the learned counsel for the petitioner that the petitioner 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. There was an audit of the petitioner's place of business, during the course of such audit the following discrepancies *inter alia* were noticed:

i) GSTR 3B vs. GSTR 1 and

ii) GSTR 3B vs. GSTR 2A/ GSTR 2B.

3. It is submitted by the learned counsel for the petitioner that ASMT-10 notice was issued on 06.06.2023, followed by a notice in DRC-01 on 12.09.2023. The impugned order came to be passed came to be passed on 26.12.2023 and that the detailed order was uploaded in the web portal. It is further 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 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***. 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. It is submitted by the learned counsel for the petitioner that the petitioner had filed an appeal before the Appellate Authority along with 10% pre-deposit, which has been rejected on the ground of being barred by limitation and her only request is that the same may be adjusted towards 25% of the disputed tax, to which, the learned Additional Government Pleader appearing for the respondents does not have any serious objection.

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

a) The impugned order dated 26.12.2023 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 with 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 petition is closed.

19.11.2024

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

To:
1.The Deputy Commissioner (ST)

Appellate Authority
Tiruppur-1
Tiruppur.

2.The Assistant Commissioner
Tiruppur North-2 Assessment Circle
Tiruppur.

MOHAMMED SHAFFIQ, J.

MSM

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