IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.34143 of 2024
and
W.M.P.Nos.36960 & 36961 of 2024

Ayyanar Steel Trading
Represented by its Partner,
N.Ellapan,
No.15/1, State Bank Officer Colony,
2nd Cross, Bangalore Covai Byepass Road,
Salem - 636 004. ...Petitioner

Vs.

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

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records on the file of the respondent herein in GSTIN/33ABGFA9345R1ZU/2017-18 in FORM GST DRC-07 proceedings dated 29.01.2024 and quash the same.

For Petitioner : Ms.K.Siri Chandana

For Respondent : Mr.TNC Kaushik
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 29.01.2024 passed by the respondent relating to the assessment year 2017-2018.

2. Mr.T.N.C. Kaushik, learned Additional Government Pleader, takes notice on behalf of the respondent. By consent of the parties, the main Writ Petition is taken up for disposal at the admission stage.

3. The petitioner in the regular course of its business had purchased inputs from various registered persons inside the State of Tamil Nadu. The petitioner is a registered taxable person under the provisions of the CGST and TN GST Acts. During the relevant period, the petitioner had filed its return and paid appropriate taxes. There was a surprise inspection conducted at the business premises of the petitioner, the following defects were noticed:

(i) Excess availment of input tax credit

(ii) Liability to pay tax on RCM on inward supplies

(iii) Excess claim of input tax credit in GSTR-9

(iv) Ineligible/excess claim of input tax credit as per Section 16(4) of the Act.

(v) Belated payment of taxes

3.1. Subsequently, notice was issued in Form GST DRC-01A to the petitioner on 19.09.2023 through GST portal, followed by a Show Cause Notice in Form DRC-01 dated 26.09.2023 and reminder notices dated 22.11.2023 & 20.12.2023. However, the petitioner had neither filed its reply nor paid the tax amount. Hence, the impugned order came to be passed.

4. The impugned order is challenged on the premise that the notices and orders were uploaded under the "view additional notices and orders" tab on the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and thus unable to participate in the adjudication proceedings.

5. The issues that arise for consideration in the impugned order is the alleged discrepancies mentioned above. It is 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.

6. 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. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that he may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Additional Government Pleader appearing for the respondent does not have any serious objection.

7. In view thereof, the impugned order dated 29.01.2024 is set aside and the petitioner shall deposit 25% of the disputed tax within a period of two (2) weeks from the date of receipt of a copy of this order. 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 respondents and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the above deposit is not paid or objections are not filed within the stipulated period, i.e., two weeks and four weeks respectively 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.

22.11.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
The State Tax Officer,
Alagapuram Circle, Salem,
2nd Floor, Integrated Commercial Taxes Building,
Pitchards Road, Hasthampatty,
Salem - 636 007.

MOHAMMED SHAFFIQ, J.
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