IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.33664 of 2024
and
W.M.P.Nos.36440 & 36441 of 2024

Tvl.Abraham Paulraj Nadar
Proprietor of Gallery Cars,
No.27/13, 6th Street, Vinoba,
Tondiarpet, Chennai - 600 081.
GSTIN: 33CYCPP8855N2ZN ...Petitioner

Vs.

The Assistant Commissioner (ST)
Tondiarpet Assessment Circle,
No.32, Elephant Gate Bridge Road,
Chennai - 600 003. .... 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 of the respondent herein in its impugned order passed by the respondent in the impugned order in GSTIN:33CYCPP8855N2ZN/2018-2019 dated 12.01.2023 along with consequential order under Section 74 of the CGST Act, 2017 with Ref.No.:ZD330123044514X dated 12.01.2023 for the Tax Period 2018-2019 and quash the same.

For Petitioner : Ms.R.Hemalatha

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned orders dated 12.01.2023 passed by the respondent relating to the financial year 2018-2019.

2. Mr.V.Prashanth Kiran, learned Government Advocate takes notice on behalf of the respondent.

3. By consent of the parties, the main Writ Petition is taken for disposal at the admission stage itself.

4. The petitioner is a registered dealer on the files of the respondent and GST Department and has been alloted GST registration vide GSTN No.33CYCPP8855N2ZN. During the relevant period, the petitioner had filed its return and paid appropriate taxes. On scrutiny of the returns filed by the tax payer for the financial year 2018-2019 under Section 61 of the TNGST Act 2017, it was alleged that the petitioner had availed excess ITC in GSTR-3B than

that available ITC in GSTR-2A.

5. Subsequently, notices were issued in Form ASMT-10 and Form DRC-01A to the petitioner on 06.12.2021 and 22.04.2022 respectively, followed by a show cause notice in Form GST DRC-01 to the petitioner on 25.05.2022 through GST Portal. The petitioner had filed a reply to the said show cause notice in Form GST DRC-06 on 22.06.2022 and had also undertaken to furnish the relevant documents. Even after a lapse of 6 months, the petitioner had not furnished any documents in support of the claim. Hence, the impugned orders came to be passed confirming the proposals.

6. The issue that arises for consideration in the impugned orders is the alleged mismatch between **GSTR-3B and GSTR-2A**. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, it would be able to explain the aforesaid alleged discrepancies .

7. 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 the petitioner may be granted one final opportunity before the adjudicating authority to put forth its objections to the proposal, to which the learned Government Advocate appearing for the respondent does not have any serious objection.

8. In view thereof, the impugned orders dated 12.01.2023 are set aside and the petitioner shall deposit 25% of the disputed tax to the respondent within a period of four (4) weeks from the date of receipt of a copy of this order. On complying with the above condition, the impugned order 12.01.2023 shall be treated as show cause notice and the petitioner shall submit its objections within a period of four (4) weeks thereafter 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. If the above deposit is not paid or objections are not filed within the stipulated period stated supra, the impugned orders of assessment shall stand restored.

9. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

15.11.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
The Assistant Commissioner (ST)
Tondiarpet Assessment Circle,
No.32, Elephant Gate Bridge Road,
Chennai - 600 003.

MOHAMMED SHAFFIQ, J.

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<u>W.P.Nos.33664 of 2024</u>

15.11.2024