IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.33324 of 2024
and
W.M.P.Nos.36113 and 36115 of 2024

Tvl.Sriram Industries,
Rep. by R.Sridharan,
No.40/2, Puthavedu Street,
Moondram Kattalai Village,
Kundrathur, Chennai 600 069.

... Petitioner

Vs.

The State Tax Officer (ST) (FAC),
Kundrathur Assessment Circle,
4/109, 1st Floor, Bangalore Chennai Highway,
Varadarajapuram, Nazrathpet, Chennai 123. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records leading to the issuance of proceedings with order in GSTIN No.33BJFPS4041C1ZM/2018-19 along with summary of the order FORM GST DRC-07 dated 10.04.2024, by the respondent herein and quash the same and direct the respondent herein to provide a reasonable opportunity to the petitioner, including a personal hearing to consider and reassess the case after giving full and fair opportunity to the petitioner.

For Petitioner	:	Mr.N.Desinghu
For Respondent	:	Mr.V.Prashanth Kiran Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 10.04.2024, passed by the respondent in GSTIN No.33BJFPS4041C1ZM/2018-19 along with Form GST DRC-07 on the premise that it suffers from the vice of non application of mind.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of manufacturing of Engineering components, valve, pumps, steams and automobiles and is registered under the GST Act. During the relevant period of 2018-19, the petitioner has filed the returns and paid appropriate taxes. However, on scrutiny the following discrepancies were noticed:

(i) Mismatch between GSTR 3B and GSTR 1

(ii) Mismatch between GSTR 3B and GSTR 2A

(iii) Discrepancy in GSTR-9 verification (ITC variation)

3. It is submitted by the learned counsel for the petitioner that an intimation in GST ASMT-10 was issued on 18.12.2021, followed by GST ASMT-11 dated 22.07.2022 and 24.01.2023, in response to which the petitioner filed its reply dated 28.06.2022. Thereafter, a notice in Form DRC01 was issued on 18.12.2023 for which the petitioner filed its reply on 29.01.2024. After considering the reply the impugned order dated 10.04.2024 came to be passed. It is submitted by the learned counsel for the petitioner that personal hearing was not granted and had the personal hearing been granted they would have been able to explain the alleged discrepancies.

4. 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,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes.

5. 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 Government Advocate appearing for the respondent does not have any serious objection.

6. In view thereof, the impugned order dated 10.04.2024 is set aside and the petitioner shall deposit 25% of the disputed tax within a period of four 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 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. If the above deposit is not paid or objections are not filed within the stipulated period, i.e., four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

7. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

08.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

The State Tax Officer (ST) (FAC),
Kundrathur Assessment Circle,
4/109, 1st Floor, Bangalore Chennai Highway,
Varadarajapuram, Nazrathpet, Chennai 123.

MOHAMMED SHAFFIQ, J.

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