IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.33358 of 2024
and
W.M.P.Nos.36137 and 36138 of 2024

Tvl.Glo Shipping Logistics Pvt. Ltd.,
Rep. by its Finance Manager,
No.2D, Glenden Place, No.310, No.813,
Next to EGA Theatre, Indian Bank,
Poonamalle High Road, Kilpauk,
Chennai, Tamil Nadu 600 010. ... Petitioner

Vs.

The State Tax Officer,
Kilpauk Assessment Circle,
No.1, Greams Road, 3rd Floor,
PAPJM Annex Building,
Chennai, Tamil Nadu 600 006. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the Impugned assessment order in Ref.No.ZD330824300657E dated 31.08.2024 under Section 73 of the CGST/TNGST Act, 2017 for the Financial Year 2019-20 and uploaded the same along with the summary of order in DRC07 from the files of the respondent herein and quash the same.

For Petitioner : Ms.Aparna Nandakumar

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned assessment order dated 31.08.2024 on the premise that the impugned order traverses beyond the show cause notice thereby suffers from violation of principle of natural justice apart from being contrary to the mandate under Section 75(7) of the GST Act.

2. The petitioner herein is a private limited company providing non-vessel operating common carrier services specializing in both full container load and less than container goods (grouped shipments).The petitioner is registered under the GST Act and has filed its return and paid appropriate taxes for the period 2019-20. On examination of the information furnished in the return under various heads the following defects were noticed:

(i) Under declaration of output tax

(ii) Excess claim of Input Tax

(iii)Under Declaration of Ineligible Input Tax Credit

(iv) Claim of Input Tax on non business transaction and exempt supplies contrary to the restriction under Section 17 of GST Act,2017.

(v) Input tax claimed from dealers with canceled registration certificate, defaulter in filing returns and non tax payers.

3. A show cause notice was issued in form DRC01 dated 21.05.2024 wherein the tax liability was arrived at 21,77,761/- comprising of Rs.7,58,287/- (SGST), Rs.7,58,287/- (CGST) and IGST Rs.6,61,187/-. In response, the petitioner had submitted its detailed reply dated 19.06.2024, 21.06.2024 and 26.07.2024. On consideration of the reply, the impugned order has been passed by the respondent authority whereby the petitioner's claim that they are Ocean Freight Service providers was rejected and they were instead treated as intermediary and the consequential interest and penalty was increased from Rs.21,77,761/- to Rs.96,83,029/-. The following table in the show cause notice and the order of assessment is relevant and thus extracted here under:

(i) FORM GST DRC-01 dated 21.05.2024

Summary of show cause Notice

Sr. No.	Tax Rate (%)	Turn over	Tax Period		Act	POS(Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
1	0	0	APR 2019	MAR 2020	SGST	NA	7,58,287.00	6,57,478.00	75829	0	0	14,91,594.00
2	0	0	APR 2019	MAR 2020	CGST	NA	7,58,287.00	6,53,802.00	75829	0	0	14,87,918.00
3	0	0	APR 2019	MAR 2020	IGST	Tamil Nadu	6,61,187.00	5,52,354.00	66119	0	0	12,79,660.00
Total							21,77,761.00	18,63,634.00	2,17,777.00	0	0	42,59,172.00

(ii) FORM GST DRC 07 dated 31.08.2024

Order under Section 73

Sr. No.	Tax Rate (%)	Turnover	Tax Period		Act	POS(Place of Supply)	Tax	Interest	Penalty	Fee	Others	Total
			From	To								
1	2	3	4	5	6	7	8	9	10	11	12	13
1	0	0	APR 2019	MAR2020	IGST	Tamil Nadu	11711	10367	20000	0	0	42078
2	0	0	APR 2019	MAR2020	CGST	NA	48,35,659.00	43,00,883.00	4,83,566.00	0	0	96,20,108.00
3	0	0	APR 2019	MAR2020	SGST	NA	48,35,659.00	43,00,883.00	4,83,566.00	0	0	96,20,108.00
Total							96,83,029.00	86,12,133.00	9,87,132.00	0	0	1,92,82,294.00

4. It was thus submitted by the learned counsel for the petitioner that they never had an opportunity to respond to the case of the respondent that the petitioner would qualify as an intermediary which resulted in consequential increase in the tax liability inasmuch as it was set out only in the impugned order for the first time. It was also submitted that departure from show cause notice attract sub-section (7) to Section 75 of the GST Act, 2017 which reads as under:

"Section 75. General provisions relating to determination of tax.-

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice."

5. At this juncture, it was submitted by the learned counsel for the respondent that inasmuch as the petitioner's status as intermediary was set out in the impugned order for the first time which resulted in the increase in the demand of taxes and the consequential interest and penalty in the impugned order being in excess of the amount specified in the notices, the petitioner may treat the impugned order of assessment as a show cause notice and submit their reply within a period of 3 weeks from the date of receipt of a copy of this order. If any such reply is filed the same would be considered and orders would be passed on merits in accordance with law after affording the petitioner a

reasonable opportunity of hearing.

6. In view thereof, the impugned order dated 31.08.2024 is set aside. It is open to the petitioner to submit their reply within a period of 3 weeks from the date of receipt of a copy of this order. If for any reason the petitioner does not file their reply within the stipulated period i.e., 3 weeks 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. Consequently, connected miscellaneous petitions are closed.

12.11.2024

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

The Deputy State Tax Officer-2,
Pallavaram Assessment Circle,
Integrated Commercial Taxes Building,
III Floor, Room No.345,
Nandanam, Chennai 35.

MOHAMMED SHAFFIQ, J.

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