IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.33470 of 2024
and
W.M.P.Nos.36240, 36242 and 36243 of 2024

Tvl.Vivek Traders LLP,
(Represented by its Partner,
Mr.Ronak Tatia),
No.3, 320, Valluvar Kottam High Road,
Nungambakkam, Chennai-600 034. ...Petitioner

Vs.

1.The Assistant Commissioner (ST),
Valluvarkottam Assessment Circle,
4th Floor, Palaniappa Building,
Greams Road, Chennai-600 006.

2.The Deputy Commissioner (ST),
GST – Appeal, Chennai-1,
PAPJM Annexe Building, 3rd Floor,
Greams Road, Chennai-600 006.

3.The Branch Manager,
HDFC Bank,
Nungambakkam College Road,
Prince Tower Complex,
No.G-04, G-05, College Road,
Nungambakkam, Chennai-600 006. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the records on the files of the 1st Respondent herein, in his FORM GST DRC – 07 with Reference No.ZD3310232149110 dated 31.10.2023 along with detailed proceedings in 33AAOFV4394C1ZZ/2021-22 dated 31.10.2023 and quash the same.

For Petitioner : Mr.S.Vishnupriya

For Respondents 1 and 2 : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 31.10.2023, which is passed confirming the demand raised by the refund rejection order dated 22.11.2021, consequent to the dismissal of the appeal filed against the same.

2. The petitioner is engaged in the business of import and export and trading of laptops and its accessories. During the relevant period 2021-22, the petitioner was registered under the Goods and Services Act, 2017 and has filed its returns

and paid appropriate taxes. The petitioner had filed a refund application in Form GSTR RFD-01 dated 17.09.2021 for the period February to October, 2020 claiming refund on account of export of goods without payment of tax to the extent of Rs.74,05,832/-. The 1st Respondent passed a provisional refund order in Form GSTR RFD-04 dated 23.09.2021 sanctioning a refund of Rs.44,43,500/-. Thereafter 1st Respondent however issued a notice for rejection of refund, in Form GST RFD-08 dated 01.10.2021, 22.10.2021 and 11.11.2021 against the alleged claim of wrong ITC to the extent of Rs.74, 05,832/-. The petitioner submitted its reply in Form GSTR RFD-09 on 20.11.2021 for the notice dated 11.11.2021. Despite the above response of the petitioner, the 1st Respondent proceeded to pass the refund rejection order in Form GST RFD-06 dated 22.11.2021.

3. Against the above order of rejection of refund, an appeal was preferred by the petitioner in AP/GST/675/2021 dated 23.12.2021 on the files of the 2nd Respondent. The 2nd Respondent Appellate Authority affirmed the order of the 1st Respondent dated 22.11.2021 vide order dated 21.06.2023. It may be relevant to note that during the pendency of the appeal before the 2nd Respondent Appellate Authority, the 1st Respondent issued an intimation in GST DRC-01A dated

03.03.2022 alleging that refund has been erroneously granted. The petitioner filed its reply on 17.03.2022 stating that an appeal has been preferred in respect of the refund rejection order dated 22.11.2021 and requested the 1st Respondent to drop further proceedings. In the meanwhile, the 2nd Respondent Appellate Authority passed an order dated 21.06.2023 affirming the order rejecting the claim of refund vide proceedings dated 22.11.2021. Thereafter, the 1st Respondent proceeded to issue a Show Cause Notice in DRC-01 dated 05.09.2023 followed by reminders dated 23.09.2023, 09.10.2023 and 26.10.2023 were issued and the order in Form GST DRC-07 dated 31.10.2023, the impugned order was passed confirming the proposal. It is this order which is the subject matter of challenge in the present writ petition.

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.*** It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax vide order dated 31.10.2023 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 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 31.10.2023 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 petitions are closed.

02.12.2024

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

To:

1.The Assistant Commissioner (ST),
Valluvarkottam Assessment Circle,
4^{th} Floor, Palaniappa Building,
Greams Road, Chennai-600 006.

2.The Deputy Commissioner (ST),

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PAPJM Annexe Building, 3rd Floor,
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MOHAMMED SHAFFIQ, J.

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