IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.34056 of 2024

Classic Mobiles,
Represented by its Proprietor,
Javithkhan,
No.40 E 4th Cross Co-operative Colony,
Krishnagiri. ... Petitioner

Vs.

The State Tax Officer (ST)
Inspection Group 2,
Office of the Joint Commissioner (ST),
Intelligence, Commercial Taxes Building,
Perandapalli, Hosur-635 109. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari, calling for the records on the files of the respondent herein in GSTIN/33AIIPJ0425A1Z3/2020-21 in FORM GST DRC-07 proceedings dated 31.05.2024 and quash the same.

For Petitioner : Ms.K.Siri Chandana

For Respondent :Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 31.05.2024 relating to the assessment year 2020-21.

2. The petitioner is engaged in the business of Mobiles and Accessories of fruit pulp. The petitioner is a registered dealer under Tamil Nadu Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. An inspection was conducted at the petitioner's business premises on 18.05.2023. During the course of inspection, the following discrepancies were noticed:

ii) Tax liability difference between GSTR 1 vs 3B

ii) Ineligible ITC to be reversed

iii) Profit and Loss account

iv) Discount Received

v) Inward E way Bills

2.1. Subsequently, a notice was issued in DRC-01A to the petitioner on 28.06.2023 through GST Portal, followed by a Show Cause Notice on 05.01.2024 and reminder on 22.02.2024. However, the petitioner had neither filed its reply nor paid the tax amount. Hence, the impugned order came to be passed.

3. The impugned order is challenged on the premise that neither the show cause notices nor the impugned order of assessment has been served by tendering to the petitioner or by registered post, instead it was uploaded in the common portal. It was further submitted that the petitioner was unable to access the common portal and thus unable to participate in the adjudication proceedings.

4. The issues that arise for consideration in the impugned order is the alleged discrepancy between GSTR 1 vs 3B, Ineligible ITC to be reversed, Profit and Loss account, Discount Received and Inward E way Bills. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies which are stated above.

5. 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 they 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 31.05.2024 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.

7. Accordingly, the Writ Petition stands disposed of. No costs.

Consequently, WMP Nos.36874 and 36876 of 2024 are closed.

28.11.2024

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

To
The State Tax Officer (ST)
Inspection Group 2,
Office of the Joint Commissioner (ST),
Intelligence, Commercial Taxes Building,
Perandapalli, Hosur-635 109

MOHAMMED SHAFFIQ, J.

mrn

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