IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2024

Coram:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.34634 of 2024
and W.M.P.Nos.37563 & 37564 of 2024

K.K.Ginning Factory
Represented by its Proprietor
Chinnusamy Kuppan,
5/186, Kovalnadu Bus Stop,
Katchupalli Post,
Edapaddi Post, Salem – 637 102.

...Petitioner

Versus

The State Tax Officer (State Taxes),
Edappaddy Assessment Circle,
Velladivalasu, Edappaddy.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the files of the respondent herein in GSTIN/33DIYPK5396C1ZR/2018-19 dated 16.04.2024 and quash the same.

For Petitioner	:	Mr.N.Chandirasekar
For Respondent	:	Mr.TNC.Kaushik, Additional Government Pleader

ORDER

Mr.TNC.Kaushik, learned Additional Government Pleader takes notice for the respondent.

2. With the consent of both sides, this writ petition is taken up for final disposal at the admission stage itself.

3. The present writ petition has been filed by the petitioner challenging the assessment order bearing GSTIN/33DIYPK5396C1ZR/2018-19 dated 16.04.2024 passed by the respondent.

4. The learned counsel for the petitioner submitted that the petitioner is engaged in the business of Ginning. The petitioner has been duly filing their returns and paying all the statutory taxes. While so, as per the authorization of the Joint Commissioner (ST) Salem Division, Salem, an audit was conducted in the petitioner's premises on 13.06.2023. On scrutinizing the returns filed by the petitioner for the Financial Year 2018-

19, following discrepancies have been noticed:

(i) There is a mismatch of Input Tax Credit availed as per Form GSTR-3B and the availability as per Form GSTR-2A;

(ii) Short payment of tax;

(iii) Difference in purchase turnover in B2B and

(iv) ITC reversal under Section 16(2) of the GST Act.

Hence, the respondent has issued a Show Cause Notice dated 30.01.2024, stating the above discrepancies. Thereafter, the respondent has issued the Assessment Order dated 16.04.2024, confirming the proposals made in the show cause notice. Both the show cause notice and the impugned assessment order have not been served to the petitioner either by tendering or by way of Registered Post, instead, the same were uploaded in the "Additional Notices and Orders" tab of the common portal in the petitioner's dashboard. Hence, the petitioner was unable to reply to the show cause notice and also, unable to participate in the adjudication proceedings. It is also submitted by the learned counsel that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies.

5. The learned counsel for the petitioner has placed reliance on the order passed by 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 in similar circumstances, this Court has remanded the matter back to the respondent, subject to the payment of 25% of the disputed tax by the petitioner therein.

6. The learned counsel for the petitioner further submitted that the petitioner is ready and willing to pay 25% of the disputed tax amount and that one final opportunity may be granted to the petitioner to put forth their objections to the proposal before the Adjudicating Authority, to which, the learned Additional Government Pleader appearing for the respondent does not have any serious objection.

7. In view thereof, the impugned assessment order dated 16.04.2024 passed by the respondent is set aside on condition that the petitioner shall pay 25% of the disputed tax, within a period of four weeks from the date of receipt of a copy of this order. On complying the said condition, the impugned assessment order shall be treated as Show Cause Notice. The petitioner is directed to file their objections along with supporting documents/material, if any, within a period of four weeks from the date of

receipt of a copy of this order. On filing of such objections by the petitioner, the respondent shall consider the same and pass appropriate orders on merits and in accordance with law, after affording a reasonable opportunity of hearing to the petitioner, as expeditiously as possible. If the deposit is not paid or objections are not filed by the petitioner within the stipulated time as stated above, the impugned assessment order shall stand restored.

8. With the above directions, this writ petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.11.2024

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

To

The State Tax Officer (State Taxes),
Edappaddy Assessment Circle,
Velladivalasu, Edappaddy.

MOHAMMED SHAFFIQ, J.

mrr

W.P.No.34634 of 2024

19.11.2024