IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.34750 of 2024

Roshan Sumermal Shah ..Petitioner

Vs.

1.The Deputy Commissioner (CT),
O/o.the Deputy Commissioner (ST),
2nd Floor, GST Appeal, Chennai-1,
Greams Road, Chennai-600 006.

2.The Assistant Commissioner (ST),
Chintadripet Assessment Circle,
Chennai. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, calling for the records leading to the issuance of assessment order bearing reference GSTIN:33AVRPS2106B1ZV/2017-18 dated 18.12.2023 passed by the second respondent herein and quash the same and pass orders.

For Petitioner : Ms.Chandrika B

For Respondents : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 18.12.2023, relating to the assessment year 2017-18.

2. The petitioner is engaged in the business of trading in telephone sets and loud speakers and is a registered dealer under the Goods and Services Act, 2017. During the relevant period, the petitioner filed its return and paid the appropriate taxes. However, on verification, it was noticed that there was mismatch between GSTR-2A and GSTR3B, which is extracted hereunder:

Tax Period-financial year	**Purchase Value as per GSTR2A/2B Value (Sales Value reported in gstr1 of the Suppliers)**	**Total Turnover reported in GSTR3B return**	**Difference**
2017-18	99073791.67	71300712.94	27773078.73

2.1. Subsequently, a notice was issued to the petitioner on 11.09.2023, followed by an intimation notice dated 13.09.2023. The petitioner was also issued

Show cause notice on 22.09.2023 and reminders on 02.11.2023 and 20.11.2023. The petitioner, in response, had filed a reply and also sought for time to furnish certain documents. Despite being provided with further opportunity, the petitioner has not produced any document thereafter. In view thereof, impugned order was passed, confirming the proposal. Aggrieved by the same, the petitioner had preferred an appeal on 16.05.2024, which is after the period prescribed for filing an appeal in the condonable limit. In view thereof, the appeal was rejected. The petitioner has now challenged the impugned order on the ground that without even considering the petitioner's request for time to furnish further documents, 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 have 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 was unable to participate in the adjudication proceedings.

4. 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. The learned counsel for the petitioner would then 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. It is further submitted that subsequent to the passing of the impugned order, the petitioner has remitted amounts in excess of the admitted tax and his only request is that the same may be adjusted towards 25% of the disputed tax, to which, the learned Government Advocate appearing for the respondents does not have any serious objection.

5. In view thereof, the impugned order is set aside and the petitioner shall deposit 25% of the disputed tax within a period of four (4) weeks from the date of receipt of a copy of this order. The respondent authority shall take into account the amount remitted by the petitioner in excess of the admitted tax, while reckoning

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

6. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, WMP Nos.37681 and 37684 of 2024 are closed.

25.11.2024

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

To

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O/o.the Deputy Commissioner (ST),
2nd Floor, GST Appeal, Chennai-1,
Greams Road, Chennai-600 006.

2.The Assistant Commissioner (ST),
Chintadripet Assessment Circle,
Chennai.

MOHAMMED SHAFFIQ, J.

mrn

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