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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.34396 of 2024

M/s.Nanban Enterprises,
Represented by its Proprietor,
Mr.Madhan,
No.7 Raman Street, Periyar Nagar,
Nesapakkam, Chennai-600 078. ... Petitioner

Vs.

The State Tax Officer,
K.K.Nagar Assessment Circle,
5th Floor, PAPJM Annex Buildings,
Greams Road, Chennai-600 006. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the respondent in GSTIN:33BXQPM8260C1ZC/2021-22 dated 24.06.2024 and quash the same as illegal, arbitrary and violation of principles of natural justice.

For Petitioner : Mr.S.Kanmani Annamalai
For Respondent : Ms.Amrita Dinakaran
Government Advocate

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ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 24.06.2024 relating to the assessment year 2021-22.

2. The petitioner is engaged in the business of ferrous wastae and scrap, re-melting scrap INGOTS of iron or steel and also consumable goods including rice. The petitioner is a registered dealer under the Tamil Nadu Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. While scrutinizing the petitioner's return, it was found that there was mismatch between GSTR-3B and GSTR-2A.

2.1. Subsequently, a notice was issued in DRC-01A to the petitioner on 03.11.2022 through GST Portal, followed by a Show Cause Notice on 14.11.2022 and reminders on 05.12.2022 and 03.11.2023. The petitioner was also granted an opportunity of personal hearing. The petitioner had filed their reply on 14.11.2022, wherein it was explained that the discrepancy between GSTR-3B and GSTR-2A was only in view of the fact that there was a delay in filing of the returns by the petitioner's suppliers. However, the impugned order came to be passed, confirming the proposal, on the premise that the petitioner

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had not produced documentary evidence to substantiate the claim nor have the petitioner appeared before the proper officer for a personal hearing along with relevant documents.

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. The limited issue that arises for consideration in the impugned order is the alleged under declaration of output tax and excess claim of ITC. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, he would be able to explain the alleged discrepancy between GSTR-3B and GSTR-2A.

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***

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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 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 respondent does not have any serious objection.

6. In view thereof, the impugned order dated 24.06.2024 is set aside and the petitioner shall deposit 25% of the disputed tax within a period of six (6) 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 six (6) 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., six weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

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7. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, W.M.P.Nos.37279 and 37281 of 2024 are closed.

27.11.2024

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

To:
The State Tax Officer,
K.K.Nagar Assessment Circle,
5th Floor, PAPJM Annex Buildings,
Greams Road, Chennai-600 006.

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MOHAMMED SHAFFIQ, J.

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