IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.34607 of 2024
and
W.M.P.No.37533 of 2024

M/s.New Fathima Medicals,
Represented by its Proprietor, Mr Hayath Basha,
No.58, Mangapathy Street,
Chintadripet, Chennai-600 002.

...Petitioner

Vs.

1. The Deputy Commissioner (ST),
GST Appeals, Chennai-1,
No.1, PAPJM Buildings (Annex),
Third Floor, Greams Road, Chennai 600 006.

2. The Deputy State Tax Officer-1,
Chintadripet Assessment Circle,
Annex Buildings, First Floor,
Greams Road, Chennai 600 006.

.... Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the 1st respondent to permit the petitioner to file an appeal against the order DRC 07 dated 26.12.2023 and DRC07 dated 16.03.2024 passed by the 2nd respondent along with condone delay petition and taken on the file for hearing by considering the petitioner's representation dated 12.10.2024 preferred to the 1st respondent accordance with law within the time stipulated by this Court.

For Petitioner : Mr.N.Ganesh

For Respondents : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 16.03.2024 passed by the second respondent relating to the assessment year 2018-2019.

2. Mr.G.Nanmaran, learned Special Government Pleader (Taxes) takes notice on behalf of the respondents.

3. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

4. The petitioner is running a medical shop, a proprietorship business and is registered under Goods and Services Act, 2017, whose GST Registration Number is GSTIN:33AAUPH1727K1ZI. During the relevant period, the

petitioner had filed its return and paid appropriate taxes. While scrutinizing the petitioner's return, it was found that on comparison of the Input Tax Credit availed in Table 4.A.(2) + 4.A.(3) of GSTR-3B against reverse charge and liability declared against inward supply on reverse charge in Table 3.1d of GSTR-3B, it was noticed that the petitioner had claimed excess input tax credit.

4.1. Subsequently, notices in Form DRC-01A and DRC-01 were issued to the petitioner on 30.08.2023 and 12.12.2023 respectively through GST Portal, followed by three reminder notices dated 19.01.2024, 15.02.2024 & 05.03.2024 respectively and personal hearing opportunity was also afforded to the petitioner. However, the petitioner had neither filed its reply nor appeared for personal hearing. Hence, the impugned order came to be passed.

5. The impugned order is challenged on the premise that neither the show cause notice 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.

6 . The limited issue that arises for consideration in the impugned order is that the petitioner had availed excess input tax credit over and above that of the tax paid under reverse charge mechanism. 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 discrepancies regarding the excess availment of Input Tax Credit.

7. 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 he may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Special Government Pleader appearing for the respondents does not have any serious objection.

8. In view thereof, the impugned order dated 16.03.2024 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 second 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., two weeks and four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand revived.

9. It is submitted by the learned counsel for the petitioner that the petitioner's Bank account has also been attached. Considering the fact that the impugned order itself has been set aside, this Court is of the opinion that the attachment of the petitioner's Bank account cannot survive any longer and

hence, it is ordered to be lifted/withdrawn.

10. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

22.11.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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MOHAMMED SHAFFIQ, J.
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