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W.P.No.34018 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2024

Coram

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.34018 of 2024

and

W.M.P.No.36837 & 36838 of 2024

M/s.A B Selvanatham Chetty Son,
(represented by S.Palani - Partner)
59, 1st Floor, SVS Club, Anna Road,
Chennai, Tamil Nadu - 600 002.

...Petitioner

Vs.

The Assistant Commissioner (ST),
Annasalai Assessment Circle,
Greens Road, Annex Building,
4th Floor, Chennai - 600 006.

... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records of the respondent in the impugned order Reference No.ZD331123175380T in GSTIN:33AABFA3142L2ZT/2017-18 dated 28.11.2023 and to quash the same as the same has been passed in violation of principles of natural justice, without application of mind.

For Petitioner : Ms.Vamini. J
for Mr.K.Vaitheeswaran

For Respondents : Mr.G.Nanmaran
Special Government Pleader



W.P.No.34018 of 2024

ORDER

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The present Writ Petition is filed challenging the impugned order dated 28.11.2023 passed by the respondent relating to the assessment year 2017-2018.

2. The petitioner is engaged in the business of wholesale supply of cement to retail shop and registered under the GST Act. During the relevant period, the petitioner has paid the appropriate taxes. Scrutiny of the monthly returns revealed that the petitioner had availed the excess ITC in GSTR-3B when compared with GSTR 2A.

3. It is submitted by the learned counsel for the petitioner that notices in Form DRC-01A and show cause notice in Form DRC -01 were issued to the petitioner on 05.09.2023 and 26.09.2023 through GST portal and personal hearing was also granted to the petitioner on 16.10.2023. However, the petitioner had neither filed its reply nor appeared for personal hearing. Hence, the impugned order came to be passed confirming the proposal. It is also submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, he would be able to explain its case before the



W.P.No.34018 of 2024

respondent.

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4. 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*, to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes.

5. 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 Special Government Pleader appearing for the respondent does not have any serious objection.

6. In view thereof, the impugned order dated 28.11.2023 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



W.P.No.34018 of 2024

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., 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, connected miscellaneous petitions are closed.

19.11.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
jd

To
The Assistant Commissioner (ST),
Annasalai Assessment Circle,
Greens Road, Annex Building,
4th Floor, Chennai - 600 006.



WEB COPY



W.P.No.34018 of 2024

MOHAMMED SHAFFIQ, J.
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W.P.No.34018 of 2024



WEB COPY



W.P.No.34018 of 2024

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