IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.34663 of 2024

M/s C K Fabrics,
Represented by its Managing Partner Krishnakumar
292, State Bank Colony3rd Street,
Rayapuram,
Tiruppur-641602. ..Petitioner

Vs.

Assistant Commissioner (ST),
Tiruppur Central-II Circle,
North I Circle,
42, CT New Building,
Kumaran Road,
Tirupur -641 601. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari calling for the records relating to impugned order bearing GSTIN:33AALFC5346E1ZN/2018-19 dated 09.02.2023, passed by the respondent and quash the same as the same being arbitrary, passed in violation of the principles of natural justice, and pass orders.

For Petitioner : Ms.K.Aarthy

For Respondents : Mr.C.Harsha Raj,
Additional Government Pleader.

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 09.02.2023, relating to the assessment year 2018-19.

2. The petitioner is engaged in the business of Dyeing & Bleaching of Garments 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 of the petitioner's return filed for the year 2018-19, it was found that there was output tax mismatch between GSTR 3B and GSTR 1. Subsequently, a notice was issued to the petitioner in GST Form ASMT 10 on 12.04.2022, followed by show cause notices on 17.08.2022 and 08.12.2022. The petitioner was also given opportunity of personal hearing on 24.01.2023. However, the petitioner had neither filed a reply nor availed of the opportunity of hearing given to him. Hence, the impugned order came to be passed, confirming the proposal.

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 Additional Government Pleader 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, if any, 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.37593 and 37595 of 2024 are closed.

25.11.2024

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

To
Assistant Commissioner (ST),
Tiruppur Central-II Circle,
North I Circle,
42, CT New Building,
Kumaran Road,
Tirupur -641 601

MOHAMMED SHAFFIQ, J.

mrn

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