IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.35118 of 2024
and
WMP Nos.38043, 38044 of 2024

M/s NS Agencies
Represented by its Proprietrix Velan Nirmala
Santhur Road, Pochampalli Taluk,
Krishnagiri, Tamil Nadu, 635206 : Petitioner

Versus

Joint Commissioner, Salem
GST bhawan, No.1 Foulkes Compound
Anaimedu, Salem 5636 001 : Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for the records relating to the impugned Order-in-Original No.08/2023-GST(JC) dated 20.12.2023 passed by the Respondent based on the provisions of Section 16(4) of CGST/TNGST Act, 2017 and quash the same being in violation of Sections 16 (2) and 50 of the CGST Act and also in violation of articles 14, 19(1)(g) and 265 of the Constitution and thus render justice.

For Petitioner : Mr.P.Gowtham

For Respondent :Mr.S.Gurumoorthy,
Central Government Standing Counsel

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 20.12.2023 relating to the assessment year 2017-18.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of distribution of various fast moving consumer goods and is registered under the Goods and Services Tax Act, 2017. During the relevant period of 2017-18, the petitioner filed its returns and paid the appropriate taxes. However, during the scrutiny of the petitioner's monthly return, the following discrepancies were noticed:

i) Non payment of interest

ii) Difference in ITC availment in Form GSTR 3B and Form GSTR 2A.

iii) Non reversal of ITC attributable to Exempt Supplies.

3. It is submitted by the learned counsel for the petitioner that an intimation in ASMT-10 was issued on 27.05.2022, followed by a show cause notice in Sl.No.03/2023-GST-JC dated 29.06.2023. However, the petitioner had neither filed its reply nor paid the tax amount. It is submitted by the learned counsel for the petitioner that neither the show cause notices nor the impugned

order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded in the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. 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.

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 Central Government Standing Counsel appearing for the respondent does not have any serious objection.

6. In view thereof, the impugned order dated 20.12.2023 is set aside and the petitioner shall deposit 25% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order. The impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of four 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 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. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

28.11.2024

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

To

TheJoint Commissioner, Salem
GST bhawan, No.1 Foulkes Compound
Anaimedu, Salem 5636 001

MOHAMMED SHAFFIQ, J.

mrn

W.P. No.35118 of 2024

28.11.2024