IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.35040 of 2024 and
W.M.P.No.37986 and 37987 of 2024

M/s.Graced Enterprises,
Rep. by its Partner,
Charles Elango John ..Petitioner

Vs.

The Assistant Commissioner (ST),
Chengalpattu Assessment Circle,
Station:No.16A, 1st floor, 1st Main Road,
Anna Nagar, Chenalpattu-603 001 ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, to call for the impugned order, dated 30.04.2024, No.GSTIN/33AAAPE6556F1Z3/2018-19 issued by the respondent and quash the same as illegal and arbitrary

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

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 30.04.2024 relating to the assessment year 2018-19.

2. The petitioner is engaged in the business of whole sale and retail trading of groceries. The petitioner is a registered dealer under Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. On the basis of an authorization issued by the Joint Commissioner, an audit was conducted under Section 65 of the Act. The books of accounts and returns on being verified, certain defects were noticed. Hence, audit slips were issued for the following defects:

i) Tax payer has effected exempted sale reported in GSTR-9 Annual return
ii) Input tax credit availed on non business or personal purpose
iii) Input tax credit availed on capital goods
iv) Input tax credit claimed in Part III under the head of inward supplies
v) Excess input tax credit declared in GSTR-9 annual return
vi) Tax payer has shown under trade payables
vii) Received other income and reported in their profit and loss account
viii)Tax payer has shown certain transactions under the head of other expenses
ix) documents not produced

2.1. It is submitted by the learned counsel for the petitioner that a notice was issued on 22.12.2023, followed by a show cause notice in DRC-01 on 27.12.2023. The petitioner had filed a reply on 16.04.2023 , however the impugned order has been passed on the premise that petitioner have not furnished supporting documents.

3. 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 submit documents in support of their objection, to which the learned Government Advocate appearing for the respondent does not have any serious objection.

4. By consent of parties, the writ petition stands disposed of on the following terms:

a) The impugned order dated 30.04.2024 is set aside

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondent, within a period of four weeks from the date of receipt of a copy of this order.

c) If any amount has been recovered or paid out of the disputed taxes, including by way of pre-deposit in appeal, the same would be reduced from the 25% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 25 % of disputed taxes to be paid within a period of one week from the date of receipt of a copy of this order. The petitioner shall deposit such remaining sum within a period of three weeks from such intimation.

d) The entire exercise of verification of payment, if any, intimation of the balance sums to be paid for compliance of the direction of 25% of the disputed taxes after deducting the sums already paid and payment by the petitioner of the balance amount on intimation in compliance of the above direction shall be completed within a period of four weeks from the date of receipt of copy of this order.

e) Failure to comply with the above condition viz., payment of 25% of disputed taxes within the stipulated period i.e., four weeks from the date of receipt of a copy of this order shall result in restoration of the impugned order.

f) If there is any recovery by way of attachment of Bank account or garnishee proceedings, the same shall be lifted /withdrawn on complying with the above condition viz., payment of 25 % of the disputed taxes.

g) 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. It is made clear that if the above conditions viz., 25% of disputed taxes is not complied or objections are not filed within the stipulated period, four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

5. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

29.11.2024

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

To
The State Tax Officer,
Chengalpattu Assessment Circle,
Station:No.16A, 1st Floor, 1st Main Road,
Anna Nagar, Chengalpattu - 603 001.

MOHAMMED SHAFFIQ, J.

mrn

<u>W.P.No.35040 of 2024 and</u>
<u>W.M.P.No.37986 and 37987 of 2024</u>

29.11.2024