



W.P. No.35206 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.35206 of 2024

M/s.Jai Anjaneya Traders,
Represented by its Proprietor,
J.Sivakumar

... Petitioner

Vs.

The Deputy State Tax Officer,
Adjudication & Legal,
Office of the Joint Commissioner (State Taxes),
Intelligence Wing, Hosur,
3/47, Sapthagiri Complex,
Thorapalli Agraharam Village,
Hosur 635 109.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the connected records pertaining to the impugned proceedings of the respondent herein made in Ref:33KAXPS5244B1Z9/2022-23 dated 03.05.2024 and quash the same as illegal and consequently directing the respondent herein to pass an order afresh affording the opportunity of personal hearing to the petitioner herein.

For Petitioner : Mr.Manoharan S Sundaram

For respondent : Mr.TNC Kavshik
Additional Government Pleader



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ORDER

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The present writ petition is filed challenging the impugned order passed by the respondent dated 03.05.2024 relating to the assessment year 2022-23.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of industrial based oil used for genset and machineries in factories and is registered under the Tamil Nadu Goods and Services Tax Act, 2017. During the relevant period of 2022-23, the petitioner filed its returns and paid the appropriate taxes. However, during inspection of the petitioner's business premises on 14.06.2023 by the proper officer authorized, it was found that there was mismatch between GSTR-3B and GSTR2A/2B and ineligible availment of ITC under Section 17(5) of the TNGST Act, 2017.

3. It is submitted by the learned counsel for the petitioner that a show cause notice in DRC-01 was issued on 16.02.2024. Further, personal hearings were offered on 30.03.2024, 08.04.2024 and 16.04.2024. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. It is submitted by the learned counsel for the petitioner that neither the



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



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6. In view thereof, the impugned order dated 03.05.2024 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, W.M.P.Nos.38118 and 38120 of 2024 are closed.

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Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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To:

The Deputy State Tax Officer,
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MOHAMMED SHAFFIQ, J.

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