IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.34515 of 2024
and
W.M.P. Nos.37413 and 37414 of 2024

Tvl.Arihant Motors,
Represented by its Partner,
Amish Kumar,
123A, GNT Bye Pass Road,
Red Hills, Chennai, Tamil Nadu-600 052. ... Petitioner

Vs.

1.The Assistant Commissioner (ST),
(also known as Commercial Tax Officer),
Madhavaram Assessment Circle,
Station:Room No.104, First Floor,
Integrated Commercial Taxes Building,
Wall Tax Road, Chennai-600 003.

2.The Deputy Commissioner (ST) (FAC),
GST Appeal, Chennai-I,
Annexe Building, 2nd Floor,
No.1, Greams Road, Chennai-600 006. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the 1st Respondent herein, in order Reference No.33ABBFA496H1ZL/2018-19 dated 25.04.2024 issued along with the summary of the order in FORM-GST-DRC-07 with Reference No.ZD330424203364V dated 25.04.2024 and quash the same.

For Petitioner : Ms.S.Vishnupriya

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 25.04.2024 on the premise that the impugned order is made in violation of principles of natural justice.

2. The petitioner is a partner in a firm and is registered under the Goods and Services Act, 2017. During the relevant period, the petitioner filed its return and paid the appropriate taxes. However, during the scrutiny of the petitioner's return, it was found that there were multiple E-way bills for same invoice number in contravention of Rule 55(d)(5) of the TNGST Rules. The genuineness of the transaction was thus doubted.

2.1. Pursuant thereto, a show cause notice was issued to the petitioner on 22.12.2023 with an opportunity of personal hearing, another notice in DRC-01 was issued on 08.01.2024, followed by a reminder on 13.04.2024. However, the petitioner had neither filed its reply nor availed personal hearing. 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 discrepancy. 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, an appeal was also preferred and payment of 10% of disputed tax was made as pre-deposit. It is further submitted that there is bank attachment and the same may be lifted, to which, the learned Government Advocate appearing for the respondents does not have any serious objection.

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

a) The impugned order dated 25.04.2024 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/adjusted, from/towards 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, if any, 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, if any, to be paid for compliance with the direction of payment of 25% of the disputed taxes, after deducting the sums already paid and payment by the petitioner of the balance amount, if any, on intimation in compliance with 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.

6. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

18.11.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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To:
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MOHAMMED SHAFFIQ, J.

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