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W.P. No.35367 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.35367 of 2024
and
WMP Nos.38245 & 38247 of 2024

Ganesan Palaniswame

... Petitioner

Versus

The Assistant Commissioner,
Office of the Assistant Commissioner (ST) (FAC)
Peelamedu South Circle, Coimbatore – III,
Commercial Taxes Annex Buildings,
Dr.Balasundaram Chettiar Road,
Coimbatore - 641 018.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari, calling for the records in Reference No.ZD330524315496F dated 30.05.2024 Order u/s.74 of the TNGST Act, 2017 along with the Summary of the Order dated 30.05.2024 on the file of the Respondent for the F.Y 2018-19 and quash the same.

For Petitioner : Mr.G.Baskar

For Respondent :Mr.G.Nanmaran,
Special Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 30.05.2024 relating to the assessment year 2018-19.



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2. The petitioner is engaged in the business of sales of tiles. 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. The returns filed by the petitioner in Form GSTR 3B and GSTR 1; and ITC availed by GSTR 2A; availed and utilized through GSTR 3B were subjected to scrutiny under Section 61 of the TNGST Act. During the course of such scrutiny, the following defects were noticed:

- a) Incorrect declaration of tax on its outward supplies
- b) Excess claim of input tax credit being claimed on business transactions
- c) Under declaration of ineligible input tax credit.

2.1. Pursuant thereto, a show notice was issued in DRC 01 to the petitioner on 03.05.2024. Further, personal hearing was offered to the petitioner on 29.05.2024. However, the petitioner had neither filed its reply nor availed the opportunity of personal hearing. Hence, the impugned order came to be passed, confirming the proposal.

3. It is submitted by the learned counsel for the petitioner that neither the show cause notice nor the impugned order of assessment has been served on the



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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 further 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*. 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 put forth their objections to the proposal, to which, the learned Special Government Pleader appearing for the respondent does not have any serious objection.

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

- a) The impugned order dated 30.05.2024 is set aside
- b) The petitioner shall deposit 25% of the disputed taxes as admitted by



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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 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



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the above condition viz., payment of 25 % of the disputed taxes.

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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. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

29.11.2024

Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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MOHAMMED SHAFFIQ, J.

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