IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.35268 of 2024

Tvl.Muthu Packaging Works,
Represented by its Propritrix,
Muthukumar Mahalaxmi,
No.218, Sidco Industrial Estate,
Thirumullaivayal,
Chennai-600 062. ..Petitioner

Vs.

1.The Assistant Commissioner (ST),
Thirumullaivoyal Assessment Circle,
115, 1st Floor, Integrated Commercial Taxes,
Office Building, No.32, Elephant Gate Bridge Road,
Park Town, Chennai-600 003.

2.The Deputy Commissioner (ST)
GST Appeal Chennai 1,
Greams Road, 2nd Floor, Room No.210,
Chennai. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus calling for the records of the first respondent in GSTIN:33AGMPM1923C1ZS/2021-22 dated 21.01.2023 and quash the same and consequently direct the first respondent to given an opportunity of personal hearing and pass orders.

For Petitioner : Mr.P.R.Kumar

For Respondents : Mr.TNC Kavshik
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 21.01.2023 relating to the assessment year 2021-22.

2. The petitioner is engaged in the business of packaging material and effecting supplies/sales of packaging materials within the State and outside the State. The petitioner is a registered dealer under Tamil Nadu Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. On scrutiny of the monthly returns Form-GSTR-3B and GSTR-1 for the year 2021-22, it was noticed that there was mismatch between outward supplies value and tax payable as per GSTR-3B and GSTR-1

2.1. Subsequently, notice was issued in DRC-01A to the petitioner on 28.04.2022 through GST Portal, followed by a Show Cause Notice on 20.07.2022. However, the petitioner had neither filed its reply nor paid the tax amount. Hence, the impugned order came to be passed. Aggrieved by the same, the petitioner preferred an appeal in Form GST APL -02 before the second respondent-appellate authority. The second respondent, by order dated 19.10.2024 rejected the appeal on the ground of limitation. Hence, the petitioner has filed the present writ petition challenging the order dated 21.01.2023.

3. The impugned order is challenged on the premise that neither the show cause notices nor the impugned order of assessment has 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 unable to participate in the adjudication proceedings.

4. The issues that arise for consideration in the impugned order is the alleged mismatch between mismatch between outward supplies value and tax payable as per GSTR-3B and GSTR-1. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, he would be able to explain the alleged discrepancies between GSTR-3B and GSTR-1.

5. 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 they may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal. It is further submitted that during the course of the appeal, the petitioner has remitted amounts in excess of the admitted tax and his only request is that the same may be adjusted towards 25% of the disputed tax. It is further submitted that there is bank attachment and the same may be lifted/withdrawn, to which, the learned Additional Government Pleader appearing for the respondents does not have any serious objection.

6. In view thereof, the impugned order dated 21.01.2023 is set aside and the petitioner shall deposit 25% of the disputed tax within a period of four (4) weeks from the date of receipt of a copy of this order. The respondent authority shall take into account the amount remitted by the petitioner in excess of the admitted tax, while reckoning 25% of the disputed tax. 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. If the above deposit is not paid or objections are not filed within the stipulated period, i.e., four weeks and four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored. It was submitted that pursuant to the impugned order of assessment, recovery proceedings were initiated and bank accounts have been attached. In view of the order passed herein, the bank attachment shall be lifted/withdrawn forthwith on complying with the above condition i.e., payment of 25% of disputed taxes within a period of four weeks from the date of receipt of a copy of this order.

7. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, W.M.P.Nos.38177 and 38180 of 2024 are closed.

26.11.2024

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

To
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MOHAMMED SHAFFIQ, J.

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