IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.35170 of 2024
and
W.M.P. Nos.38075 and 38076 of 2024

Tvl.R.V.Engineering Construction,
Represented by its Proprietor, Mr.R.Vivekanandan,
No.58, Poombuggar Nagar, 3rd Elango Street,
Wimco Nagar, Thiruvottiyur,
Chennai-600 057. ... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Thiruvottiyur Assessment Circle,
No.32, Integrated Commercial Taxes Office Complex,
Elephant Gate Bridge Road,
Chennai-600 003.

2.The Branch Manager,
Bank of Baroda,
Wimco Nagar Branch,
No.665, T.H.Road,
Thiruvottiyur, Chennai-600 019. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent in order dated 20.04.2024 in GSTIN:33AATPV9003B1ZN/2018-19 and quash the same as illegal, arbitrary and in violation of principles of natural justice and further direct the 1st Respondent to defreeze the Bank account No.24760200000231 with the 2nd Respondent.

For Petitioner : Ms.C.Rekhakumari

For Respondents : Mr.V.Prashanth Kiran (for R1) Government Advocate

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 20.04.2024 relating to the assessment year 2018-19.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in civil works and electrical works for Government and also engaged in laying of roads under Government contract and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2018-19, the petitioner filed its returns and paid the appropriate taxes. On examination of information furnished in this return under various heads and also the information furnished in GSTR-01, GSTR-2A, GSTR-3B, EWB and other records, it was found that the taxpayer have not declared the correct tax liability while filing the annual returns of GSTR-09. It was also found that the petitioner had under declared output tax liability.

3. It is submitted by the learned counsel for the petitioner that a show

cause notice in DRC-01 was issued on 27.12.2023, followed by reminder on 25.03.2024. Further, personal hearing was offered on 25.03.2024. The petitioner filed a reply dated 03.04.2024 in response to the notice in Form DRC-01, however the impugned order has been passed without considering the same.

4. To the contrary, it was submitted by the learned counsel for the Respondents that the impugned order was passed after considering the reply dated 03.04.2024 on the premise that the reply is not supported by relevant documentary evidence and the same cannot be stated to suffer from violation of principles of natural justice and non-application of mind as sought to be suggested by the learned counsel for the petitioner.

5. 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. The learned counsel for the petitioner would further 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. It is further submitted that there is bank

attachment and the same may be lifted.

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

a) The impugned order dated 20.04.2024 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.

7. There shall be no order as to costs. Consequently, connected

miscellaneous petitions are closed.

21.11.2024

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

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