IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2024

Coram:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.34570 of 2024
and W.M.P.Nos.37486 & 37487 of 2024

M/s.Venkateshwaran Tex
Represented by its Proprietor
Mr.Arthanari Deivasigamani
No.240D1, Kalaignar Nagar,
Athanur Post,
Namakkal – 636 301.

...Petitioner

Versus

1.Deputy Commissioner (ST) (GST-Appeal)
Integrated Commercial Taxes Building,
Room No.233, IInd Floor,
No.17, Pitchards Road,
Salem – 600 007.

2.The Commercial Tax Officer,
2nd Floor, Taluk Office Building,
Attur Main Road, Anna Salai,
Rasipuram – 637 408.

3.Assistant Commissioner (ST),
IInd Floor, Taluk Office Building,
Anna Salai, Attur Main Road,
Rasipuram – 637 408.

4.The Branch Manager,
Indian Bank,
No.7/28, Kalaingar Nagar,
Athanur, Namakkal – 636 301.

5.Karur Vysya Bank,
Rep. by its Branch Manager,
No.155, Main Road,
Vellapillaiyarkoil,
Rasipuram – 637 505.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records pertaining to the impugned order dated 09.12.2023 issued in Reference No.ZD3312230558030 by the 2nd respondent and quash the same.

For Petitioner : Mr.G.Derrick Sam

For Respondents – 1 to 3: Mr.G.Nanmaran,
Special Government Pleader

ORDER

Mr.G.Nanmaran, learned Special Government Pleader takes notice for the respondents 1 to 3.

2. With the consent of both sides, this writ petition is taken up for final disposal at the admission stage itself.

3. The present writ petition has been filed by the petitioner challenging the impugned order dated 09.12.2023 passed by the 2nd respondent.

4. The learned counsel for the petitioner submitted that the petitioner is engaged in the business of textiles. The petitioner has been duly filing their returns and paying all the statutory taxes. However, on scrutinizing the returns filed by the petitioner, following discrepancies were found:

(i) Difference of Input Tax Credit in GSTR-3B & GSTR-2A and

(ii) Reverse Charge liability declared and Input Tax Credit claimed thereon.

Hence, the 2nd respondent had issued a Show Cause Notice DRC-01 dated 08.09.2023. However, the petitioner neither filed any reply to the show cause notice nor paid the tax amount. Therefore, the 2nd respondent has passed the impugned order of assessment dated 09.12.2023. Subsequently, the two Bank Accounts of the petitioner were attached by the 3rd respondent vide Letter dated 13.05.2024. Aggrieved over the impugned order of assessment, the petitioner had filed an appeal before the 1st respondent, but, the same was dismissed on 21.08.2024 on the ground that the appeal is barred by limitation. Challenging the dismissal of appeal, the petitioner filed a writ petition in W.P.No.32681 of 2024 and challenging the Bank Attachment Letter issued by the 3rd respondent, the petitioner filed a writ petition in W.P.No.32686 of 2024 before this Court and the same are pending.

5. The learned counsel for the petitioner also submitted that both the show cause notice and the impugned assessment order have not been served to the petitioner either by tendering or by way of Registered Post, instead, the same were uploaded in the "View Additional Notices Column" of the GST portal. Hence, the petitioner was unable to reply to the show cause notice and also, unable to participate in the adjudication proceedings. It is also submitted by the learned counsel that if the petitioner is provided with an opportunity, the petitioner would be able to explain the alleged discrepancies.

6. The learned counsel for the petitioner has placed reliance on the order passed by 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 in similar circumstances, this Court has remanded the matter back to the respondent, subject to the payment of 25% of the disputed tax by the petitioner therein.

7. The learned counsel for the petitioner further submitted that while filing the appeal, the petitioner had pre-deposited 10% of the disputed tax and now, the petitioner is ready and willing to pay 25% of the disputed tax amount and that, one final opportunity may be granted to the petitioner to put forth their objections to the proposal before the Adjudicating Authority, to which, the learned Special Government Pleader appearing for the respondents 1 to 3 does not have any serious objection.

8. In view thereof, the impugned assessment order dated 09.12.2023 passed by the 2nd respondent is set aside on condition that the petitioner shall pay 25% of the disputed tax, less 10% which was already deposited at the time of filing of the appeal, within a period of four weeks from the date of receipt of a copy of this order. On complying with the said condition, the impugned assessment order shall be treated as Show Cause Notice. The

petitioner is directed to file their objections along with supporting documents/material, if any, within a period of four weeks from the date of receipt of a copy of this order. On filing of such objections by the petitioner, the 2nd respondent shall consider the same and pass appropriate orders on merits and in accordance with law, after affording a reasonable opportunity of hearing to the petitioner, as expeditiously as possible. If the condition relating to deposit is not complied or objections are not filed by the petitioner within the stipulated time as stated above, the impugned assessment order shall stand restored.

9. With the above directions, this writ petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.11.2024

mrr

Index : Yes/No

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order

To

1.Deputy Commissioner (ST) (GST-Appeal)
Integrated Commercial Taxes Building,
Room No.233, IInd Floor,
No.17, Pitchards Road, Salem – 600 007.

2.The Commercial Tax Officer,
2nd Floor, Taluk Office Building,
Attur Main Road, Anna Salai,
Rasipuram – 637 408.

3.Assistant Commissioner (ST),
IInd Floor, Taluk Office Building,
Anna Salai, Attur Main Road,
Rasipuram – 637 408.

MOHAMMED SHAFFIQ, J.

mrr

W.P.No.34570 of 2024

19.11.2024