IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.35288 of 2024

M/s.Saravana & Co.,
Represented by its Proprietrix,
Mrs.H.S.Kalpana,
SF No.18/5 Near Anna Salai,
Somerpettai,
Krishnagiri Taluk,
Krishnagiri District-635001. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Krishnagiri-I Circle,
Krishnagir. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the connected records pertaining to the impugned proceedings of the respondent herein made in Ref GSTIN:33ACGPK9135J1ZH/2018-19 dated 29.04.2024 and quash the same as illegal and pass orders.

For Petitioner : Mr.Manoharan S
For Respondent : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 29.04.2024 relating to the assessment year 2018-19.

2. The petitioner is engaged in the business of selling portland cement and aluminous cement. 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 petitioner has filed annual return in GSTR-09 for the financial year 2018-19. While scrutinizing the petitioner's annual return, in GSTR-3B, GSTR-01, GSTR-2A, EWB and other records available, it was found that the petitioner has not declared the correct tax liability while filing the annual returns of GSTR-9 and the following discrepancies were noticed:

i) Under declaration of output tax

ii)excess claim of ITC

2.1. Subsequently, a show cause notice was issued in DRC-01 to the petitioner on 28.12.2023 through GST Portal, and an opportunity of personal hearing was also granted on 04.01.2024 and reminder on 08.04.2024. However, the petitioner had neither filed its reply nor availed of the opportunity of personal hearing. Hence, the impugned order came to be passed.

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. The limited issue that arises for consideration in the impugned order is the alleged under declaration of output tax and excess claim of ITC. 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.

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 he may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Government Advocate appearing for the respondent does not have any serious objection.

6. In view thereof, the impugned order dated 29.04.2024 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. 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 respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

7. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, W.M.P.Nos.38197 and 38198 of 2024 are closed.

27.11.2024

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

To:
The Assistant Commissioner (ST),
Krishnagiri-I Circle,
Krishnagiri

MOHAMMED SHAFFIQ, J.

mrn

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