IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.35267 of 2024
and
W.M.P.Nos.38176 and 38178 of 2024

Ramesh Associates
13/-1-10, Puduchampalli,
Raman Nagar, Mettur Dam,
Salem 636 403. ... Petitioner

Vs.

1. The State Tax Officer (Int), Adj & Legal,
   O/o. Joint Commissioner (ST) (Intelligence),
   Room No.227, 2nd Floor,
   Integrated Commercial Taxes Department,
   Hasthampatty, Salem 636 007.

2. State Tax Officer,
   O/o Joint Commissioner (ST) (Intelligence),
   2nd Floor, Integrated Commercial Taxes Department,
   Hasthampatty, Salem 636 007.

3. Joint Commissioner (ST)(Intelligence)
   2nd Floor, Integrated Commercial Taxes Department,
   Hasthampatty, Salem 636 007.

4. The Assistant Commissioner (ST) (FAC),
   (State Tax Officer signed as The Assistant
   Commissioner (ST) (FAC)),
   Mettur Assessment Circle,
   Mettur 636 403.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondents herein in impugned order passed by the respondent in GSTIN:33AAPFM6002K1Z9/2019-20 dated 07.06.2024 and the consequential FORM DRC-07 dated 07.06.2024 for the financial year 2019-20 and quash the same.

For Petitioner : Ms.G.Vardini Karthik

For R1 to R4 : Mr.TNC Kaushik
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 06.06.2024, passed by the respondent in GSTIN:33AAPFM6002K1Z9/2019-20 dated 07.06.2024 and the consequential FORM DRC-07 dated 07.06.2024 for the financial year 2019-20, on the premise that the same is made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of providing works contract service to the vendors of Indian Oil corporation and Hindustan Petroleum and is registered under the GST Act. During the relevant period of 2019-20, the petitioner has filed the returns and paid appropriate taxes. However, on a surprise inspection

dated 04.07.2023 conducted at the petitioner's businesss premises, the following defects were found Viz.,

i) Interest for belated payment of tax.

ii) Mismatch between GSTR 1 and GSTR 3B.

iii) Mismatch between GSTR 2A and GSTR 3B.

iv) Non-generation of E-way bills.

v) Generation of E-way bills for non-supplies.

3. It is submitted by the learned counsel for the petitioner that an intimation in Form DRC01A was issued on 21.12.2023 followed by a notice in DRC 01 on 13.04.2023. This was followed by reminders notices dated15.05.2024 and 21.05.2024 . However, the petitioner had not responded to any of the above notices / intimation and the impugned order came to be passed. It is submitted by the learned counsel for the petitioner that neither the show cause notices nor the impugned order of assessment has been served on the 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 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.

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,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes.

5. 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 Additional Government Pleader appearing for the respondent does not have any serious objection.

6. In view thereof, the impugned order dated 07.06.2024 and the consequential FORM DRC-07 dated 07.06.2024 are set aside and the petitioner shall deposit 25% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order. The impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of four 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. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

21.11.2024

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

To:

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MOHAMMED SHAFFIQ, J.

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