IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.35005 of 2024
and
W.M.P.Nos.37956 and 37958 of 2024

OM SIVAA PACKAGING,
Represented by its Proprietor,
Mr.Arumugam Sivakumar,
No.8, Kamaraj Nagar, 1st Street, Korukkupet,
Chennai, Tamil Nadu 600 021. ..Petitioner

Vs.

1.Office of the Deputy Commissioner (ST),
GST Appeal Chennai – I,
Greams Road, 2nd Floor,
Room No.210, Chennai.

2.The Assistant Commissioner (ST),
Washermenpet Assessment Circle,
No.32, Integrated Commercial Taxes Office co
Elephant Gate Bridge Road, Chennai 600 003. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus to call for the records on the file of the second respondent having reference No. ZD331223237655J dated

28.12.2023 in GSTIN: 33BVIPS8696G1ZU/2017-18 for the FY 2017 - 2018 and quash the same as illegal contrary the provisions of the GST Act and in violation of principles of natural justice and fair play and direct the first respondent to take the appeal having reference no. ZD331024121289R filed on 16.08.2024 on record and afford opportunity to the Petitioner.

For Petitioner : Mr.Kumarpal Chopra

For Respondents : Mr.T.N.C.Kaushik,
Additional Government Pleader.

ORDER

The present writ petition is filed challenging the impugned order passed by the second respondent dated 28.12.2023 relating to the assessment year 2017-18.

2. The petitioner is engaged in the business of manufacturing carton boxes and other allied products and is registered under the Goods and Services Act, 2017. During the relevant period, the petitioner filed its return and paid the appropriate taxes. However, during the scrutiny of the petitioner's return, it was found that there was an excess claim of Input Tax Credit over and above that the tax paid under Reverse Change Mechanism. Subsequently, a notice was issued to the petitioner in DRC-01 on 14.09.2023. Further, personal hearing was offered on 21.09.2023.

However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. Hence, the impugned order came to be passed, confirming the proposal.

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 under "View Additional Notice and Order" tab in the GST portal. It was further submitted that the petitioner was unable to access the GST portal and thus was unable to participate in the adjudication proceedings.

4. It is submitted by the learned counsel for the petitioner that the petitioner had filed an appeal dated 16.08.2024 before the Appellate Authority, which has been rejected on the ground of being barred by limitation. 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 then 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, to which, the learned Additional Government Pleader appearing for the respondents does not have any serious objection.

5. In view thereof, the impugned order 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.

6. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

20.11.2024

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

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Room No.210, Chennai.

2.The Assistant Commissioner (ST),
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No.32, Integrated Commercial Taxes Office co
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MOHAMMED SHAFFIQ, J.

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