IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.11.2024

Coram:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.34579 of 2024
and W.M.P.Nos.37500 & 37501 of 2024

Tvl.Westminster Healthcare Private Limited,
Rep. by its Authorised Signatory – Neelakant Narayanpur,
Old No.145, New No.2, Uttamar Gaandhi Salai,
Nungambakkam High Road, Nungambakkam,
Chennai – 600 034.

...Petitioner

Versus

The Deputy State Tax Officer – I,
Office of the Deputy Commercial Tax Officer,
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chetpet, Chennai – 600 031.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records on the files of the impugned proceedings of the respondent vide impugned order dated in 16.10.2023 in GSTIN: 33AABCW5630Q1ZZ/2017-18 along with Form GST DRC-07 bearing Ref.No.ZD331023088534K dated 16.10.2023 for the tax period 2017-18, quash the same.

For Petitioner	:	Ms.R.Hemalatha
For Respondent	:	Mr.V.Prashanth Kiran, Government Advocate (Tax)

ORDER

Mr.V.Prashanth Kiran, learned Government Advocate (Tax) takes notice for the respondent.

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 impugned order dated 16.10.2023 in GSTIN: 33AABCW5630Q1ZZ/2017-18 along with Form GST DRC-07 bearing Ref.No.ZD331023088534K dated 16.10.2023 passed by the respondent.

4. The learned counsel for the petitioner submitted that the petitioner is engaged in the business of supply of Healthcare Services. The petitioner has been duly filing their returns and paying all the statutory taxes. Upon scrutinizing the returns filed by the petitioner, without issuing any mandatory notices such as ASMT-10 or DRC-01A, the respondent has

issued the Show Cause Notice in Form DRC-01 dated 11.05.2023, stating that the petitioner had claimed excess ITC under RCM without payment of tax. Thereafter, the respondent has issued three reminder notices dated 18.08.2023, 31.08.2023 & 14.09.2023. Thereafter, the respondent has issued the Assessment Order dated 16.10.2023, confirming the proposals made in the show cause notice. 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/Orders" tab 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, they would be able to explain the discrepancies alleged in the show cause notice.

5. 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.

6. The learned counsel for the petitioner further submitted that 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 Government Advocate appearing for the respondent does not have any serious objection.

7. In view thereof, the impugned assessment order dated 16.10.2023 passed by the respondent is set aside on condition that the petitioner shall pay 25% of the disputed tax, within a period of four weeks from the date of receipt of a copy of this order. On complying 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 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 deposit is not paid or objections are not filed by the petitioner within the stipulated time as stated above, the impugned assessment order shall stand restored.

8. 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

The Deputy State Tax Officer – I,
Office of the Deputy Commercial Tax Officer,
Nungambakkam Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chetpet, Chennai – 600 031.

MOHAMMED SHAFFIQ, J.

mrr

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