IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.35446 of 2024

Tvl. GKE Projects and Constructions Private Limited,
Represented by its Director Mr.Inbarasan ... Petitioner

Vs.

The Assistant Commissioner (ST) (FAC),
Cholavaram Assessment Circle,
Room No.109, 1st Floor,
Integrated Commercial Taxes Building,
Elephant Gate, Wall Tax Road,
Chennai- 600 003. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the respondent in GSTIN:33AAGCG8533M1ZA dated 22.12.2023 and the consequential summary of order in Reference No.ZD331223175272Q dated 22.12.2023 and quash the same and consequently direct the respondent to entertain the records, documents and reply from the petitioner and then pass order after affording a personal hearing to the petitioner.

For Petitioner : Mr.M.Hariharan

For respondent : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 22.12.2023 relating to the assessment year 2017-18.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of work contract, using Ms steel plates to make water tanks and is registered under the Goods and Services Tax Act, 2017. During the relevant period of 2017-18, the petitioner filed its returns and paid the appropriate taxes. However, during scrutiny of the petitioner's monthly return, it was found that there was mismatch between GSTR-3B and Form 26As of Income Tax Act Form and GSTR3B and GSTR9/9C.

3. It is submitted by the learned counsel for the petitioner that an intimation in ASMT-10 was issued on 04.07.2023, followed by a notice in DRC-01 on 14.08.2023 and reminder on 15.12.2023. Further, personal hearing was offered on 15.12.2023. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. 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, they 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 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 respondent does not have any serious objection.

6. In view thereof, the impugned order dated 22.12.2023 is 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 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, W.M.P.Nos.38336 and 38337 of 2024 are closed.

29.11.2024

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

To:
The Assistant Commissioner (ST) (FAC),
Cholavaram Assessment Circle,
Room No.109, 1st Floor,
Integrated Commercial Taxes Building,
Elephant Gate, Wall Tax Road,
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MOHAMMED SHAFFIQ, J.

mrn

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