IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.37157 of 2024
and
W.M.P.Nos.40157 and 40158 of 2024

Thangam Steel and Hardwares
Represented by its Proprietor, Mr.Mani ..Petitioner

Vs.

1.Deputy State Tax Officer,
Krishnagiri -II Circle,
Hosur Division, Tamil Nadu.

2.Deputy Commissioner (ST) (GST) Appeal
Erode & Salem,
Integrated Commercial Taxes Building,
Room No.233, 2nd Floor,
No.17, Pitchards Road, Salem – 600 007. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the records relating to the impugned order dated 08.11.2023 along with its consequential demand order dated 08.11.2023 having Reference No.ZD331123044555Q issued by the first respondent and quash the same and pass orders.

For Petitioner : Ms.Nandhini

for Mr.Sanskarsamdaria S
Mr.Sourabh Samdaria

For Respondent : Mr.TNC Kavshik
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order passed by the first respondent dated 08.11.2023 relating to the assessment year 2019-20.

2. The petitioner is a proprietorship firm and is a registered dealer under Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. On scrutiny of the monthly returns, it was found that excess input tax credit claimed on inward RCM supplies in GSTR -3B.

2.1. Pursuant thereto, a notice in DRC-01A was issued to the petitioner on 22.08.2023, followed by a show cause notice in DRC-01 on 12.10.2023. Further, personal hearing was offered to the petitioner on 26.10.2023. However, the petitioner had neither filed its reply nor availed the opportunity of personal hearing. Hence, the impugned order came to be passed, confirming the proposal. Aggrieved by the same, the petitioner had filed an appeal and the same was rejected on the ground of barred by limitation.

3. 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. It is further submitted that subsequent to the passing of the impugned order, the petitioner had filed an appeal along with 10% pre-deposit and his only request is that the same may be adjusted towards 25% of the disputed tax. to which, the learned Additional Government Pleader appearing for the respondents does not have any serious objection, while seeking liberty to verify the correctness of the statement relating to remittance made by the petitioner.

4. By consent of parties, the writ petition stands disposed of on the following terms:

a) The impugned order dated 08.11.2023 is set aside

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondents, within a period of four weeks from the date of receipt of a copy of this order.

c) If any amount has been recovered or paid out of the disputed taxes, including by way of pre-deposit in appeal, the same would be reduced/adjusted, from/towards the 25% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 25 % of disputed taxes to be paid, if any, within a period of one week from the date of receipt of a copy of this order. The petitioner shall deposit such remaining sum within a period of three weeks from such intimation.

d) The entire exercise of verification of payment, if any, intimation of the balance sums, if any, to be paid for compliance with the direction of payment of 25% of the disputed taxes, after deducting the sums already paid and payment by the petitioner of the balance amount, if any, on intimation in compliance of the above direction, shall be completed within a period of four weeks from the date of receipt of copy of this order.

e) Failure to comply with the above condition viz., payment of 25% of disputed taxes within the stipulated period i.e., four weeks from the date of receipt of a copy of this order shall result in restoration of the impugned order.

f) If there is any recovery by way of attachment of Bank account or garnishee proceedings, the same shall be lifted /withdrawn on complying with the above condition viz., payment of 25 % of the disputed taxes.

g) 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. It is made clear that if the above conditions viz., 25% of disputed taxes is not complied or objections are not filed within the stipulated period, four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

5. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

12.12.2024

Speaking (or) Non Speaking Order

Neutral Citation: Yes/No
mrn

To
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MOHAMMED SHAFFIQ, J.

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