IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.35467 of 2024
and
W.M.P.No.38368 and 38371 of 2024

Best Q Engineering,
Rep. by its proprietor Mr.Kumar,
No.2, Dr.Moorhy Nagar,
Padi, Chennai 600 050. ... Petitioner

Vs.

The Assistant Commissioner,
Padi: Ambattur: Kanchipuram,
Station No's. 416,417,418,and 426,
2nd Floor, Commercial Taxes Building,
Greenways Road, Chennai 600 028. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order in Reference No.ZD330424207481T/2018-19 dated 26.04.2024 passed by the respondent and the consequential rejection order bearing Refernece No.ZD331024215358R/2018-19 dated 28.10.2024 passed by the respondent and quash the same.

For Petitioner : Mr.C.A.Ashok Kumar

For Respondents : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present writ petition is filed challenging the order dated 26.04.2024 on the ground that it has been made in violation of principles of natural justice.

2. The learned counsel for the petitioner would submit that though the present writ petition also challenges the order of rejection of application for rectification dated 28.10.2024, however he would confine his prayer to challenge the impugned order in Reference No.ZD330424207481T/2018-19 dated 26.04.2024.

3. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of Manufacturing of Automobile Components and is registered under the GST Act. During the relevant period of 2018-19, the petitioner has filed the returns and paid appropriate taxes. On examination of the information furnished in this return under various heads and also the information furnished in GSTR-01, GSTR-2A, GSTR-3B and other records available, the following defects were noticed:

a) Tax on outward supplies under declared on reconciliation of data in GSTR-09.

b) Excess claim of ITC.

c) ITC claimed in respect of supplies from cancelled dealers, return defaulters and tax non payers.

4. It is submitted by the learned Counsel for the petitioner that an intimation in DRC-01 was issued on 27.12.2023, followed by two reminders viz., 07.02.2024 and 04.04.2024. It is further submitted that the impugned order of assessment was not served on the petitioner by tender or 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 also submitted that the petitioner had paid entire taxes of the disputed taxes. It is also submitted that if the petitioner is provided with an opportunity, he would be able to explain the alleged discrepancies.

5. 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. The learned counsel for the petitioner would submit that the entire taxes have been paid and they may be granted an opportunity before the adjudicating authority to put forth their objections to the proposal, which was not objected to by the learned Special Government Pleader for the respondent.

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

a) The impugned order dated 26.04.2024 is set aside

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondent, 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.

7. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

The Assistant Commissioner,
Padi: Ambattur: Kanchipuram,
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MOHAMMED SHAFFIQ, J.

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