IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.35652 of 2024

Tvl.Sri Ram Printing Press
Represented by its proprietor Ganesh Iyamperumal ... Petitioner

Vs.

Assistant Commissioner (ST)(FAC),
Ramapuram Assessment Circle,
No.10, Greams Road, 1st Floor,
Palaniyappamaligai,
Chennai-600006. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned order bearing GSTIN 33AEXPG8886R2Z3/2017-18 dated 30.12.2023 passed by the respondent and quash the same.

For Petitioner : Mr.G.Natarajan

For respondent : Mr.TNC Kavshik
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 30.12.2023 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 printing material, pictures and photographs and renting immovable property and is registered under the Tamil Nadu 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 the scrutiny of the petitioner's monthly return, the following discrepancies were noticed:

i) Input tax credit availed on capital goods

ii) Other ITC related information as per GSTR-9

iii) Adjustment turnover due to reason not listed

iv) Other income

v) Tax/RCM Expenses

vi) Difference in Outward supply transaction

vii)Documents to be produced

3. It is submitted by the learned counsel for the petitioner that a notice in DRC-01 on 29.09.2023. Further, personal hearing was offered on 20.12.2023.

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 30.12.2023 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.38509 and 38510 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),
Ramapuram Assessment Circle,
No.10, Greams Road, 1st Floor,
Palaniyappamaligai,
Chennai-600006.

MOHAMMED SHAFFIQ, J.

mrn

W.P. No.35652 of 2024

29.11.2024

W.P.No. 35652 of 2024

and
W.M.P.Nos. 38509 & 38510 of 2024

MOHAMMED SHAFFIQ, J

Today, the case is listed under the caption "for being mentioned" at the instance of the learned Counsel for the petitioner.

2. It is represented by the learned Counsel for the petitioner that vide order dated 29.11.2024, the writ petition was disposed of by setting aside the impugned order and directing the petitioner to pay 25% of the disputed taxes within a period of four weeks. It is further submitted that subsequent to the passing of the impugned order, the petitioner had paid more than 80% of the disputed taxes and his only request is that the same may be adjusted towards the disputed tax, to which the learned Government Advocate appearing for the respondent does not have any serious objection, while seeking liberty to verify the correctness of the statement relating to remittance made by the petitioner.

3. In view of the said submission made by the learned Counsel for the petitioner, **Paragraph Nos. 4 to 7 of the order dated 29.11.2024** is substituted with the following Paragraph:-

> *4. "By consent of parties, the writ petition stands disposed of on the following terms:-*
>
> *a) The impugned order dated 30.12.2023 is set aside*

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

5. There shall be no order as to costs. Consequently, WMP Nos.38509 and 38510 of 2024 are closed.

4. Except the above modification, the earlier order dated 29.11.2024 shall remain intact. Registry is directed to carry out necessary corrections and issue the corrected order copy to the parties forthwith.

21.12.2024

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

The Assistant Commissioner (ST) (FAC),
Ramapuram Assessment Circle
No.10, Greams Road, 1st Floor,
Palaniyappa Maligai, Chennai-600 006.

MOHAMMED SHAFFIQ, J.

MSM

W.P.No. 35652 of 2024
and
W.M.P.Nos. 38509 & 38510 of 2024

21.12.2024