IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.35794 and 35775 of 2024
and
WMP Nos.38662, 38663, 38862 and 38864 of 2024

SRI MURUGAN TYPEWRITING INSTITUTE
REPRESENTED BY ITS PROPRIETOR
K.S.RAMESHBABU : Petitioner in W.P. Nos.35794 and 35775 of 2024

Vs

1.The Deputy Commissioner (CT)
O/o The Deputy Commissioner (ST)
GST-Appeal Chennai -I Main Building
2nd Floor, No.1, Greams Road
Chennai 600 006

2.The Deputy State Tax Officer
/cum The Deputy Commercial Tax Officer
Tiruttani Assessment Circle
Tiruvallur Division, Tiruvallur District

3.The Branch Manager
Canara Bank No.21 Chittor Road
Opp. to Police Quarters
Tiruttani - 631 209 : Respondents in W.P. Nos.35794 and 35775 of 2024

PRAYER in W.P.No.35794 of 2024: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorarified Mandamus calling for demand order made in Reference No.ZD331123131977G dated 22.11.2023 by the 2nd respondent and order dated 17.10.2024 passed in ARN NO.AD3307240269142 passed by 1st respondent and quash the same and consequently direct the respondent to given an opportunity of personal hearing.

PRAYER in W.P. No.35975 of 2024: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorarified Mandamus calling for demand order made in Reference No.ZD331023168414R dated 27.10.2023 by the 2nd respondent and order dated 17.10.2024 passed in ARN AD3307240094078 passed by 1st respondent and quash the same and consequently direct the respondents to given an opportunity of personal hearing.

For Petitioner : Mr.P.Suresh Babu

For Respondents :Mr.G.Nanmaran,
Special Government Pleader

COMMON ORDER

The writ petitions are filed challenging the impugned orders dated 27.10.2023 and 22.11.2023 passed by the respondent relating to the year 2020-21 and 2021-22

2. The petitioner is engaged in the services of teaching typewriting and is a registered dealer under the Goods and Services Tax Act. During the relevant period, the petitioner had filed its return and paid appropriate taxes. However, on

verification of the petitioner's monthly returns, the following discrepancies were noticed:

i) mismatch between GSTR-3B and GSTR-2A/GSTR 2B

ii) mismatch between GSTR -3B and GSTR 1

2.1. Pursuant thereto, notices in ASMT 10 were issued to the petitioner on 31.01.2023 and 27.06.2023, followed by a notice in DRC 01A, on 24.04.2023. Show cause notices in DRC 01 were issued to the petitioner on 05.08.2023 and 24.08.2023 and reminders on 07.09.2023, 06.10.2023 and 18.10.2023. Further personal hearings were offered on 21.08.2023, 31.08.2023, 14.09.2023, 13.10.2023, 25.10.2023, 06.11.2023 and 15.11.2023. However, the petitioner had neither filed its reply nor availed the opportunities for personal hearings. Hence, the impugned orders came to be passed.

3. It is submitted by the learned counsel for the petitioner that neither the show cause notices nor the impugned orders of assessment have 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 further 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 and they 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 appeals on 06.07.2024 and 16.07.2024, which were however rejected on the ground that the appeals are beyond the statutory period of limitation. It was submitted that petitioner has made 10% pre-deposit for filing the appeals and apart from that further a sum of Rs.10 Lakhs was also paid and his only request is that the same may be adjusted towards 25% of the disputed tax, which is directed to be paid, to which, the learned Special Government Pleader appearing for the respondents 1 and 2 does not have any serious objection, while seeking liberty to verify the correctness of the statement relating to remittance made by the petitioner.

5. By consent of both parties, the writ petitions stand disposed of on the following terms:

a) The impugned orders dated 27.10.2023 and 22.11.2023 are 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) It is open to the petitioner to produce material to show that the entire taxes are paid. If any amount has been recovered or paid out of the disputed taxes, including by way of pre-deposit in appeals, 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 orders of assessment shall stand restored.

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

04.12.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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<u>MOHAMMED SHAFFIQ, J.</u>

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<u>and</u>
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