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W.P. No.35634 of 2024

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.35634 of 2024

and

W.M.P.Nos.38495 and 38496 of 2024

M/s.Summit Exim,
Rep. by its Partner Mr.Mohamed Naleem,
131, Coral Merchant Street,
Mannady, Chennai,
Tamil Nadu 600 001.

... Petitioner

Vs.

The Assistant Commissioner (ST),
Muthialpet Assessment Circle,
North -1, Chennai North,
Integrated Commercial Taxes Office Complex,
Chennai, Tamil Nadu 600 003.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, call for the assessment order dated 25.04.2024 via reference No.ZD330524232238L (“Impugned Order”) issued by the respondent and quash the same as illegal and arbitrary and direct the respondent to remove the recovery Notice under Section 79 of TN GST Act 2017/CGST Act 2017 dated 16.09.2024 and remand back the matter to the respondent.

For Petitioner : Mr.A.Dhamodaran

For respondent : Ms.Amrita Dinakaran,
Government Advocate.



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ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 25.05.2024 relating to the assessment year 2020-21.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of import and export of various goods and is registered under the Goods and Services Tax Act, 2017. During the relevant period of 2020-21, the petitioner filed its returns and paid the appropriate taxes. However, during the scrutiny of the petitioner's monthly return, it was found that there was a short payment of taxes due to excess claim of Input Tax Credit and alleged mismatch between GSTR-3B and GSTR-2A/GSTR-2B.

3. It is submitted by the learned counsel for the petitioner that an intimation in ASMT-10 was issued on 02.05.2023, followed by a notice in DRC-01 on 28.08.2023. Further, personal hearing was offered on 07.09.2023. 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



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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 Government Advocate appearing for the respondent does not have any serious objection.



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6. In view thereof, the impugned order dated 25.05.2024 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, connected miscellaneous petitions are closed.

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Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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To:

The Assistant Commissioner (ST),
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MOHAMMED SHAFFIQ, J.

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