IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.35708 of 2024
and
W.M.P. Nos.38562 and 38564 of 2024

M/s.Ponni Agro Service,
Represented by its Proprietor Mr.Chokkagounder Balasubramanian,
1/235-1, Main Road, Mangalapuram,
Rasipuram, Namakkal,
Tamil Nadu-636 202. ... Petitioner

Vs.

1.The State Tax Officer,
Attur (Rural) Circle,
No.32/21, Gandhi Nagar Near Railway Station,
Attur-636 102.

2.The Branch Manager,
Karur Vysya Bank,
1/7, Attur-Rasipuram Main Road,
Mangalapuram-636 202. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records in the impugned order dated 30.04.2024 with reference ZD330424247933C in the files of the 1st Respondent and quash the same as manifestly arbitrary, void, contrary and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

For Petitioner : Ms.Saitanya Kesan

For Respondents : Ms.Amrita Dinakaran
Government Advocate (for R1)

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 30.04.2024 relating to the assessment year 2018-19.

2. It is the submitted by the learned counsel for the petitioner that the petitioner is the proprietor of the petitioner concern and is registered under the Goods and Services Act, 2017. During the relevant period viz., 2018-19, the petitioner filed its return and paid the appropriate taxes. However, during the scrutiny of the petitioner's return, it was found that there were certain discrepancies:

i) Excess claim of ITC on account of non-reconciliation of information declared in GSTR 3B.

ii) ITC to be reversed on non-business transactions and exempt supplies.

iii) Under declaration of ineligible ITC.

3. It is submitted by the learned counsel for the petitioner that a notice in DRC-01 was issued on 28.12.2023 followed by reminder on 01.02.2024.

Further, the petitioner has filed its reply on 07.02.2024. The impugned order of assessment has been passed after considering the reply, however, it was found that the petitioner had not filed any documentary evidence in support of their reply. It was submitted by the learned counsel for the petitioner that if granted one final opportunity they would be able to explain the alleged discrepancies.

4. The learned counsel for the petitioner would then 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 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 certain monies have paid by the petitioner.

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

a) The impugned order dated 30.04.2024 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 with 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.

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

25.11.2024

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

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To:
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