IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.36617 of 2024
and
W.M.P.Nos.39496 & 39497 of 2024

SRT Fuels,
Represented by its Proprietor,
S.Ramadas,
SY.No.79/5,6,1A,1B,
Periyeri V.Kootu Road,
Near Anjaneyar Temple,
Thalivasal, Attur,
Salem – 636 108. ...Petitioner

-Vs-

The Deputy State Tax Officer,
Attur (Town) Circle,
Salem. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorari, calling for the records on the files of the respondent herein in GSTIN/33AECPR6530C1ZW/2018-19 in order Reference No.ZD330424222459H dated 27.04.2024 and quash the same and pass such further orders.

For Petitioner : Mr.M.Rajkumar

For Respondent : M/s.Amrita Dinakaran,
Government Advocate (Tax)

ORDER

M/s.Amrita Dinakaran, learned Government Advocate (Tax) takes notice on behalf of the respondent. With the consent of both parties, this writ petition is taken up for final disposal at the admission stage itself.

2. The present writ petition is filed challenging the impugned order passed by the respondent dated 27.04.2024 relating to the assessment year 2018-19.

3. It is submitted by the learned counsel appearing for the petitioner that the petitioner is doing business and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2018-19, 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 existed a difference between the ITC available as per GSTR-2A and ITC availed as per GSTR-3B to the tune of Rs.10,22,809/- of IGST.

4. It is submitted by the learned counsel for the petitioner that an

intimation in Form GST DRC-07 dated 27.04.2024 followed by a notice in Form GST DRC-01 dated 05.04.2024. Further, personal hearing was offered on 10.04.2024. 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 under the field "Additional Notices and Orders" tab on 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.

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.

6. 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.

7. In view thereof, the impugned order passed by the respondent dated 27.04.2024 is hereby set aside and this Court is inclined to pass the following orders:

a) The petitioner shall deposit 25% of the disputed tax within a period of two weeks from the date of receipt of a copy of this order.

b) 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 weeks from the date of receipt of a copy of this order along with supporting documents/material.

c) 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.

d) If the above deposit is not paid or objections are not filed within the stipulated period, i.e., two weeks and four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand revived.

Accordingly, the **Writ Petition stands disposed of with the above observations and directions**. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

09.12.2024

cda
Index : Yes / No
Speaking/Non Speaking order

To

The Deputy State Tax Officer,
Attur (Town) Circle,
Salem.

J.SATHYA NARAYANA PRASAD, J.

cda

W.P.No.36617 of 2024

09.12.2024