IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.36001 of 2024
and
W.M.P.Nos.38885 and 38888 of 2024

M/s.Flarence Clean Care,
Rep. by its Proprietor,
Mr.Jesudhas Flarance Durairaj,
S/o.Durai Raj,
No.3, Rajiv Gandhi Street,
Varadharajapuram, Nazarathpet,
Tiruvallur. .. Petitioner

Vs.

The Deputy State Tax Officer - 2,
Poonamallee,
Tiruvallur District. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the impugned order in DRC 07 bearing reference GSTIN 33AAVPF1006E1Z8 dated 27.04.2024 passed by the respondent and quash the same and pass a fresh order providing an opportunity of personal hearing to the petitioner to submit the evidence.

For Petitioner : Mr.E.Sathiyaraj

For Respondent : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 27.04.2024, on the premise that the impugned order is made in violation of principle of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a registered dealer under the GST Act. During the relevant period of 2018-19, the petitioner has filed the returns and paid appropriate taxes. However, on examination of the information furnished in the return under various heads and also the information furnished in GSTR-01, GSTR-2A, GSTR-3B, the following discrepancies were noticed:

a) Tax on outward supplies under declared on reconciliation of data in GSTR-09.

b) Input Tax Credit to be reversed on non business transactions and exempt supplies.

c) Ineligible Input Tax Credit claimed in violation of Section 17(5).

3. It is submitted by the learned counsel for the petitioner that a notice in Form DRC 01 was issued on 27.12.2023, followed by a reminder on 18.03.2024. In response to the 1st reminder the petitioner requested an adjournment for personal hearing vide letter dated 28.03.2024. This was followed by another reminder notice dated 20.04.2024 with date of personal hearing on 23.04.2024. However, the petitioner had not appeared for personal hearing and the impugned order was thus passed confirming the proposal. 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 also submitted that the petitioner had paid entire taxes and if the petitioner is provided with an opportunity, he 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. The learned counsel for the petitioner would submit that the entire taxes have been paid and they may be granted an opportunity before the adjudicating authority to put forth their objections to the proposal.

5. The learned counsel for the respondent would submit on instructions that the recovery that was stated to have been made is not with reference to the assessment year in question but in relation to other assessment years.

6. In view thereof, the impugned order dated 27.04.2024 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. It is however open to the petitioner to place material on record to show that the taxes remitted relates to the disputed period. Subject to the above verification and on complying with the above condition viz., payment of 25% of the disputed taxes, 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.

05.12.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
spp

To:

The Deputy State Tax Officer - 2,
Poonamallee,
Tiruvallur District.

MOHAMMED SHAFFIQ, J.

spp

W.P. No.36001 of 2024
and
W.M.P.Nos.38885 and 38888 of 2024

05.12.2024