IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.36594 of 2024
and
W.M.P.Nos.39465 & 39466 of 2024

Mr.Kiran Kumar Bayyapu Reddy,
Proprietor of M/s.BKR Enterprises,
C/o.Malakondaiah,
1B, Bharathi Street,
West Gandhi Nagar,
Avadi – 600 054. ...Petitioner

-Vs-

1.The Deputy Commercial Tax Officer,
Avadi Assessment Circle,
Room No.122, 1st Floor,
Integrated Commercial Taxes Building (Tiruvallur Division),
Elephant Gate Brigade Road, Vepery,
Chennai – 600 003.

2.The Assistant Commissioner (ST),
Avadi Assessment Circle,
Integrated Commercial Taxes Building (Tiruvallur Division),
Elephant Gate Brigade Road (Waltax Road),
Vepery, Chennai – 600 003. ...Respondents

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 of the first respondent pursuant to the impugned order dated 29.04.2024 bearing Reference No.ZD330424233814K passed in GST.No.33AMSPB0511D1ZS for the financial year 2018-2019 and quash the same as arbitrary, illegal and pass such further orders.

For Petitioner	:	Mr.M.K.Ajith Kumar
For Respondents	:	Mr.C.Harsha Raj Additional Government Pleader (Tax)

ORDER

Mr.C.Harsha Raj, learned Additional Government Pleader (Tax) takes notice on behalf of the respondents. 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 first respondent dated 29.04.2024 relating to the assessment year 2018-19.

3. The petitioner is engaged and carrying out a business of Retail Trading and contract Engineering works bearing GSTIN Trading 33AMSPB0511D1ZS. The petitioner is a registered dealer under Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. While scrutinizing the petitioner's return, it

was found that there was mismatch between GSTR- 2A vs GSTR-3B and TDS mismatch for GSTR-7 VS 3B VS 1 . Subsequently, a show cause notice was issued in DRC-01 to the petitioner on 01.02.2022 through GST Portal, and a reminder notice was sent on 25.01.2023. However, the petitioner had neither filed its reply nor paid the tax amount. Hence, the impugned order came to be passed.

4. Learned counsel appearing for the petitioner submitted 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 Additional Government Pleader appearing for the respondents does not have any serious objection.

7. In view thereof, the impugned order passed by the first respondent dated 29.04.2024 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 respondents 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

J.SATHYA NARAYANA PRASAD, J.

cda

To

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