IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 09.12.2024**

CORAM:

**THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD**

**W.P.No.36757 of 2024**
**and**
**W.M.P.No.39672 of 2024**

Bharathi Printers,
Rep by its Proprietor, Mr.Munusamy Babu,
No.41/12, Chengalvarayan Street,
Nammalwarpet,
Chennai – 600 012. ...Petitioner

-Vs-

1.The Deputy Commercial Tax Officer – 1,
Ayanavaram Assessment Circle,
State: F/50, 3rd Floor, First Avenue,
Anna Nagar East,
Chennai – 600 102.

2.The Deputy Commissioner (ST),
GST Appeal,
Chennai – 2. ...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 on the file of the first respondent in his order passed against the petitioner GSTIN/ID:33AYZPB3829K1ZZ/2017-18 dated 16.10.2023 and quash the same, and directing the first respondent to set aside the attachment of the petitioner bank account No.10631011000849 lying in

Punjab National Bank, Adyar Branch, Chennai – 600 020 vide Ref.No.GSTIN/ID:33AYZPB3829K1ZZ/2017-18 dated 21.05.2024 for Rs.81,372/- and pass such further orders.

| | | |
|---|---|---|
| For Petitioner | : | Mr.G.Saravanan |
| For Respondents | : | Mr.T.N.C.Kaushik<br>Additional Government Pleader (Tax) |

**ORDER**

Mr.T.N.C.Kaushik, 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 16.10.2023.

3. The petitioner is engaged in a printing business in the name of Bharathi Printers. The petitioner is a registered dealer under Goods and Services Act, 2017. During the relevant period, the petitioner filed its returns and paid the appropriate taxes. While scrutinizing the petitioner's return, it was found that there was a mismatch in the input tax credit availed in GSTR-

3B and the actual credit reflected in GSTR-1 as stated below:

| | |
|---|---|
| GSTR-I Vs GSTR 3B difference | Rs.27,092/- |
| Interest at 18% p.a till 16.10.2023 | Rs.27,188/- |
| Penalty due (u/s.74 of TNGST Act, 2017) | Rs.27,092/- |
| **Total Due** | **Rs.81,372/-** |

4. Learned counsel appearing for the petitioner submitted that the first respondent had sent Show Cause Notice for cancellation of registration in Form GST REG-17 on 05.09.2018 and had sent order for cancellation of registration. The first respondent sent a notice in Form GST DRC 01 for mismatch between GSTR-3B and GSTR-1 on 10.07.2023. Simultaneously, a show cause notice and summary of show cause notice were also sent by the first respondent on 10.07.2023. Thereafter, the first respondent passed the impugned order on 16.10.2023.

5. Learned counsel further submitted that the petitioner had paid the mismatch amount of the GSTR-3B and GSTR-1 of Rs.27,092/- on 21.09.2024 to the first respondent and the petitioner filed an appeal before the respondent on 22.09.2024. The statutory appeal had to be filed in terms of Section 107(1) of the TNGST Act, 2017 within a period of 90 days from the impugned order dated 16.10.2023, but due to the above said facts and

circumstances, the petitioner was not able to file the appeal before the second respondent. Based on the impugned order dated 16.10.2023 passed by the first respondent, the appeal was dismissed by the second respondent on 18.10.2024 for the reason of delay in submission of appeal and the petitioner had paid the mismatch liability amount of Rs.27,092/- before the first respondent on 21.09.2024.

6. Learned counsel appearing for the petitioner contended that the first respondent attached the petitioner bank Account Number:10631011000849 lying in Punjab National Bank, Adyar Branch, Chennai-600 020 vide Ref.No.GSTIN/ID 33AYZPB3829K1ZZ/2017-18 dated 21.05.2024 for Rs.81,372/-

7. It is submitted by the learned counsel for the petitioner that neither the show cause notices nor the impugned order 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. 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.

8. 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 tax.

9. It was further submitted that the petitioner had already paid the mismatch liability amount of Rs.27,092/- before the first respondent on 21.09.2024 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.

10. In view thereof, the impugned order passed by the first respondent dated 16.10.2023 is hereby set aside and this Court is inclined to pass the following orders:

a) It is open to the respondents to verify the above statement made by the learned counsel for the petitioner that the mismatch liability amount of Rs.27,092/- has been remitted already, the respondents may verify the same.

b) If the statement made by the learned counsel for the petitioner regarding the payment of aforesaid amount is incorrect, the respondents authority shall intimate the same to the petitioner, who shall deposit 25% of disputed tax within a period of two weeks from the date of such intimation.

c) Subject to verification of payment of the mismatch liability amount or on payment of 25% of disputed tax, the bank attachment shall be lifted forthwith.

d) On complying with the above conditions, 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.

e) If any such objections are filed within the stipulated period, the respondents shall consider the same and pass appropriate orders in accordance with law after affording the petitioner a reasonable opportunity of hearing.

f) If objections are not filed within the stipulated period i.e., four weeks from the date of receipt of a copy of this order or if deposit of 25% is not made within the stipulated period, if not already paid, 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 petition is closed.

**09.12.2024**

cda
Index : Yes / No
Speaking/Non Speaking order

To

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Chennai – 2.

**J.SATHYA NARAYANA PRASAD, J.**

cda

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