IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.36582 of 2024
and
W.M.P. Nos.39444 and 39445 of 2024

M/s.Kawarlal CDEF,
Represented by its Proprietor,
Deepak Parasmal Jain,
No.41, 1st Raghunayakulu Street,
Park Town, Chennai-600 003. ... Petitioner

Vs.

1.The Deputy State Tax Officer-2,
Park Town Assessment Circle,
Integrated Commercial Taxes Department Building,
No.32, Elephant Gate, Vepery,
Chennai-600 007.

2.The Assistant Commissioner (State Tax),
Park Town Assessment Circle,
Integrated Commercial Taxes Department Building,
No.32, Elephant Gate, Vepery,
Chennai-600 007.

3.The Branch Manager,
Union Bank of India,
No.194, Mint Street,
P.B.No.2845, Chennai-600 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the first respondent in his proceedings in GSTIN:33ADBPJ0023E1ZJ/2017-2018, quash the order dated 27.12.2023 passed therein.

For Petitioner	: Mr.P.V.Sudakar
For Respondents 1 and 2	: Ms.Amrita Dinakaran

ORDER

The present writ petition is filed challenging the impugned order in GSTIN:33ADBPJ0023E1ZJ/2017-2018 dated 27.12.2023, passed by the respondent on the premise that the same was made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a dealer in pharmaceutical goods and is registered under the GST Act. During the relevant period of 2017-18, the petitioner has filed the returns and paid appropriate taxes. While so, there was an audit under Section 65 of the Act. During the course of the audit, the following discrepancies were noticed:

Description	Head	Tax	Interest	Penalty
Credit note- non submission of records	CGST	178598	182933	17859
	SGST	178598	182933	17859
Levy of interest on belated filing of returns	CGST	0	2882	0
	SGST	0	2882	0
	IGST	0	27400	0
Import of goods	IGST	335865	344017	67173
Interest on excess TRAN-1 credit reversed	CGST	0	1100190	0
	SGST	0	0	0
Freight Charges	CGST	303482	310849	30348
	SGST	303482	310849	30348
RCM Liabilities	CGST	187486	192037	18749
	SGST	187486	192037	18749
Sundry Creditors	CGST	2419745	2478482	241975

3. It is submitted by the learned counsel for the petitioner that Form DRC-01 notice was issued on 25.09.2023 followed by personal hearing notice on 07.12.2023. It is further submitted that the petitioner had filed documents but however the documents were not supported by explanation. In view thereof, the impugned order was passed confirming the proposal vide proceedings dated 27.12.2023. Soon thereafter, on 06.01.2024 the petitioner filed a rectification petition, however the same is pending and orders are yet to be passed. The

petitioner vide letter dated 08.08.2024 reminded about the pendency of the rectification petition. Thereafter, vide order dated 06.09.2024, the rectification petition stood rejected on the premise that there is no error apparent on the face of the record warranting exercise of power under Section 161 of the Act. Aggrieved by the same, the petitioner has filed the present writ petition challenging the impugned order dated 27.12.2023.

4. The learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of **Sree Manoj International Vs. Deputy State Tax Officer in W.P.No.10977 of 2024 dated 25.04.2024**, to submit that this court has remanded the matter back in similar circumstances subject to payment of 10% of the disputed taxes.

5. It was further submitted that the petitioner is ready and willing to pay 10% of the disputed tax and that he may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which the learned Special Government Pleader appearing for the respondent does not have any serious objection.

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

a) The impugned order dated 27.12.2023 is set aside.

b) The petitioner shall deposit 10% 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 10% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 10% 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 10% 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 10% 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 10% 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., 10% 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.

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

11.12.2024

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

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