IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.36234 of 2024
and
W.M.P.Nos.39110 and 39111 of 2024

Tvl.Indo Chem Co., Represented by its Proprietor
Mr.Imtiaz Ali, 58-B/1, Kalakadu,
Ammani Kondalampatty,
P.Nattamangalam, Kondalampatty,
Salem 636 010. ... Petitioner

Vs.

The State Tax Officer,
(also known as Commercial Tax Officer),
Kondalampatty Circle,
Salem, Tamil Nadu. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari call for the records on the files of the Respondent herein in GST No:33ADDPA0753C1ZH/2017-18 dated 22.12.2023 and the connected order under section 73 dated 26.12.2023 and the summary of the order in Form GST DRC-07 dated 26.12.2023 issued in Reference No. ZD3312232040265 and quash the same.

For Petitioner : Mr.A.N.R.Jayaprathap

For respondent : Mr.V.Prashanth Kiran,
Government Advocate.

ORDER

The present writ petition is filed challenging the impugned orders dated 22.12.2023 and 26.12.2023 passed by the respondent relating to the assessment year 2017-18.

2. It is submitted by the learned counsel for the petitioner that the petitioner is registered under the Goods and Services Tax Act, 2017. During the relevant period viz., 2017-18, the petitioner filed its returns and paid the appropriate taxes. However, on verification of the petitioner's monthly return, it was found that there was an alleged mismatch between GSTR-3B and GSTR-2A.

3. It is submitted by the learned counsel for the petitioner that an intimation in ASMT-10 was issued on 24.02.2023, followed by notices in DRC-01A on 15.05.2023 and DRC-01 on 21.08.2023. Further, personal hearing was offered on 31.08.2023. Reply was filed by the petitioner on 30.11.2023. Though the reply was filed by the petitioner, the same has been rejected on the premise that the petitioner had failed to pay the demand proposed in DRC-01A, even after the lapse of a month. Hence, the impugned order came to be passed, confirming the proposal. 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 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 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.

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.

5. 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.

6. In view thereof, the impugned orders dated 22.12.2023 and 26.12.2023 are set aside respectively 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. 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.

28.11.2024

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

To:

The State Tax Officer,
(also known as Commercial Tax Officer),
Kondalampatty Circle,
Salem, Tamil Nadu.

MOHAMMED SHAFFIQ, J.

shk

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