IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.36631 of 2024
and
W.M.P.Nos.39508 and 39509 of 2024

Tvl.Ananya Shelters Private Limited,
GSTIN:33AAICA0620M1ZY,
Represented by its Executive Director P.Karthik Kumar,
No.5/1C, Gandhi Nagar, Kavundapalayam,
Coimbatore 641 030. ... Petitioner

Vs.

The Assistant Commissioner (ST) Inspection,
Commercial Taxes Building,
Dr.Balasundaram Road, Coimbatore 641 018. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order ZD3307241487182/2018-19 dated 11.07.2024 issued by the respondent and quash the same.

For Petitioner	:	Mr.S.Arvind for Mr.G.Derrick Sam
For Respondent	:	Mr.G.Nanmaran Special Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 11.07.2024, passed by the respondent in Reference No.ZD3307241487182/2018-19.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in real estate promotion and construction of residential homes and apartments and is registered under the GST Act. During the relevant period of 2018-19, the petitioner has filed the returns and paid appropriate taxes. However, on verification of the returns filed by the petitioner, the following defects were noticed:

(i)Availment of excess ITC under IGST as per GSTR 9.

(ii)Mismatch Between GSTR 3B and 2A.

(iii)Non-Declaration of Advances received under GSTR1.

(iv)Non-Payment of tax under RCM for services received from unregistered contractors.

(v)Unexplained related party transactions for huge value.

Subsequently, the petitioner had filed replies dated 08.04.2024, 22.06.2024 and 08.07.2024, upon consideration of the replies filed by the petitioners, defects were dropped except the following 3 defects viz.,

(i)Availment of excess ITC under IGST as per GSTR 9.

(ii) Mismatch Between GSTR 3B and 2A.

(iii)Non-Payment of tax under RCM for services received from unregistered contractors.

Insofar as these three defects are concerned the same was confirmed as it was not supported by relevant documentary evidences.

3. It is submitted by the learned counsel for the petitioner that 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.

5. It was further submitted that the petitioner is ready and willing to pay 25% 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. In view thereof, the impugned order dated 11.07.2024 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. 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. 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 respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored. It was submitted that pursuant to the impugned order of assessment, recovery proceedings were initiated and bank accounts have been attached. In view of the order passed herein, the bank attachment shall be lifted forthwith on complying with the above condition i.e., payment of 25% of disputed taxes within a period of four weeks from the date of receipt of a copy of this order.

7. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

02.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

The Assistant Commissioner (ST) Inspection,
Commercial Taxes Building,
Dr.Balasundaram Road, Coimbatore 641 018.

MOHAMMED SHAFFIQ, J.

spp

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