IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.36346 of 2024
and
W.M.P.Nos.39221 and 39222 of 2024

M/s.KB Logistics Services Pvt. Ltd.,
Represented by its Director Mr.Kumar,
5th Floor, Block-V-B, 28/12,
SMJ Parrys Plaza, 2nd Line Beach,
Chennai 600 001. ... Petitioner

Vs.

The Assistant Commissioner (ST)
Harbour assessment circle,
Integrated Commercial Taxes Office Complex,
Room No.326, 3rd Floor, Elephant Gate Bridge Road,
Chennai 3. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records in the files of the respondent in GSTIN:3AAECK4066DIZV/2019-20 dated 28.08.2024 and quash the same being illegal, invalid against the law and violated the principles of natural justice.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr. C.Harsha Raj,
Additional Government Pleader.

ORDER

The present writ petition is filed challenging the impugned order dated 28.08.2024 passed by the respondent relating to the assessment year 2019-20.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of providing both Sea and Air transport services and is registered under the Goods and Services Tax Act, 2017. During the relevant period viz., 2019-20, the petitioner filed its returns and paid the appropriate taxes. However, on examination of the information furnished in GSTR-3B, GSTR-01, GSTR-2A, EWB and other records available, it was *inter alia* found that there was an excess claim of ITC.

3. It is submitted by the learned counsel for the petitioner that an intimation in Form GST DRC-01 was issued on 23.05.2024, followed by reminders dated 09.07.2024, 16.07.2024 and 23.07.2024. Further, personal

hearing was offered on 15.09.2024, 19.07.2024 and 29.07.2024. Though the reply was filed by the petitioner on 27.08.2024, the same has been rejected on the premise that the petitioner had not filed any documentary evidence in support of the objections. 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.

4. 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. The learned counsel for the petitioner would then 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 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 respondent does not have any serious objection.

6. In view thereof, the impugned order dated 28.08.2024 is set aside and the petitioner shall deposit 10% 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.

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 Assistant Commissioner (ST)
Harbour assessment circle,
Integrated Commercial Taxes Office Complex,
Room No.326, 3rd Floor, Elephant Gate Bridge Road,
Chennai 3.

MOHAMMED SHAFFIQ, J.

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