IN THE HIGHCOURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.36708 of 2024
and
W.M.P.Nos.39611 and 39612 of 2024

Mr.Rajesh Manohar Pujara
Proprietor of Bombay Trading Agencies,
282, Mint Street,
Sowcarpet, Chennai 600 079. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Peddunaickenpet Assessment Circle,
Chennai North, Tamil Nadu. ... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent leading to the issuance of Impugned Order dated 22.12.2023 vide GSTIN:33AACPP7187P1Z0 and quash the same and consequently direct the respondents to drop the proceedings inititated against the petitioner.

For Petitioner : Mr.A.G.Sathyanarayana

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

ORDER

The present writ petition is filed challenging the impugned order dated 22.12.2023, passed by the respondent in GSTIN:33AACPP7187P1Z0/2017-18 on the premise that the same is made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of retailing of Industrial Hardware and is registered under the GST Act. During the relevant period of 2017-18, the petitioner has filed the returns and paid appropriate taxes. On scrutiny of the returns, it was found that the petitioner had claimed and availed ineligible Input tax credit under GSTR TRAN-I.

3. It is submitted by the learned counsel for the petitioner that an intimation in DRC 01A was issued on 09.09.2023 followed by a notice in Form DRC-01 on 19.09.2023. 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 "view additional notices" column in GST

Portal, thereby, the petitioner was unaware of the impugned order of assessment. 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 22.12.2023 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 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),
Peddunaickenpet Assessment Circle,
Chennai North, Tamil Nadu.

MOHAMMED SHAFFIQ, J.

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