IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.37627 of 2024
and W.M.P.Nos.40666 and 40667 of 2024

M/s.Graced Enterprises,
Represented by its Partner,
Charles Elango John ..Petitioner

Vs.

State Tax Officer,
Chengalpattu Assessment Circle,
Station:No.16A, 1st Floor, 1st Main Road,
Anna Nagar, Chengalpattu-603 001 ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the impugned order dated 27.04.2024 order No.GSTIN:33AALFG7703P1ZZ financial year 2018-19 issued by the respondent and quash the same as illegal and arbitrary.

For Petitioner : Mr.S.Prabakaran

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

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 27.04.2024 relating to the assessment year 2018-19.

2. The petitioner is engaged in the business of whole sale and retail trading in groceries. The petitioner is a registered dealer under Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. However, on examination of the information furnished in the return under various heads and also the information furnished in GSTR-01, GSTR2A, GSTR-3B and other records, the following defects were noticed:

i) Input tax credit to be reversed on non-business transactions & exempt supplies.

ii) Under declaration of Ineligible input tax credit

2.1. Pursuant thereto, a show notice was issued in DRC 01 to the petitioner on 28.12.2023 and reminders on 06.02.2024, 27.02.2024 and 21.03.2024. Further personal hearings were offered on 13.02.2024, 04.03.2024, 25.03.2024 and 06.04.2024. However, the petitioner had neither filed its reply nor availed opportunities of personal hearings. Hence, the impugned order came to be passed, confirming the proposal.

3. It is submitted by the learned counsel for the petitioner that neither the show cause notice 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 further 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***. 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. It is further submitted that there is bank attachment and the same may be lifted, to which, the learned Government Advocate appearing for the respondent

does not have any serious objection.

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

a) The impugned order dated 27.04.2024 is set aside

b) The petitioner shall deposit 25% 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 25% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 25 % 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 25% 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 of 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 25% 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 25 % 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., 25% 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.

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

21.12.2024

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

To
The State Tax Officer,
Chengalpattu Assessment Circle,
Station:No.16A, 1st Floor, 1st Main Road,
Anna Nagar, Chengalpattu-603 001

MOHAMMED SHAFFIQ, J.

mrn

W.P.No.37627 of 2024
and W.M.P.Nos.40666 and 40667 of 2024

21.12.2024