IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.37429 of 2024
and
WMP Nos.40434 to 40436 of 2024

Tvl Green India Textiles
rep. By its Proprietor
Aziz Rafik Sayabu : Petitioner

Versus

1.The Assistant Commissioner (ST)
Tiruppur North -1 Assessment circle
Tiruppur

2.The Deputy Commissioner (ST)
Appellate Authority GST Appeals,
Integrated New Commercial Tax Buildings,
3rd Floor, SF No. 400 1,7,8,46,
Pudur B Village, Erode : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari calling for the orders of the 1st respondent in Form DRC-07 with reference no. ZD331223262565J dated 29.12.2023 passed under Section 73 of the TNGST Act, 2017 r/w the Consequential notice Form GST DRC -13 with Roc No 33AJSPR5104P1ZM / 2024 dated 12.09.2024 and quash he same as illegal, devoid of merits and in violation of principles of natural justice.

For Petitioner : Mr.Varun Pandian

For Respondent : Mr.G.Nanmaran,
Special Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 29.12.2023 relating to the assessment year 2017-18 and the consequential recovery notice dated 12.09.2024.

2. The petitioner is engaged in the business of manufacture, import and export of textiles and is a registered dealer under Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. As per the authorization issued by the Joint Commissioner (ST) Tirupur, the petitioner's account were audited. During the course of audit, certain discrepancies were noticed. Pursuant thereto, a notice in ADT-02 , followed by a notice in DRC 01A were issued on 22.09.2023 setting out the following discrepancies:

i) RCM on legal and professional payment

ii) Non payment of GST on rent under RCM

iii) Non payment of GST on freight expenses under RCM

iv) RCM not paid for repairs and maintenance

v) RCM not paid for the General expenses

vi) Interest to be paid for belated filing of monthly returns

vii) mismatch between GSTR 3B and GSTR 2A

viii) Mismatch between GSTR 1 and balance sheet

2.1. In response to the above notices, the petitioner had filed its reply on 20.09.2023. Thereafter, a show cause notice in DRC 01 was issued to the petitioner on 23.09.2023, wherein the proposal on RCM came to be dropped and the proposal with regard to mismatch between GSTR 3B and GSTR 2A, mismatch between GSTR 1 and balance sheet and the interest for filing GSTR 3 B belatedly came to be confirmed. Further, personal hearing was granted on 18.12.2023. However, the petitioner had neither filed its reply nor availed the opportunity for personal hearing. Hence, the impugned order came to be passed, confirming the defects in the show cause notice. Aggrieved by the same, the petitioner had filed an appeal and the same was rejected on the ground of barred by limitation.

3. 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 subsequent to the passing of the impugned order, the petitioner had filed an appeal along with 10% pre-deposit and his only request is that the same may be adjusted towards 25% of the disputed tax, to which the learned Special Government Pleader appearing for the respondents does not have any serious objection, while seeking liberty to verify the correctness of the statement relating to remittance made by the petitioner.

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

a) The impugned order dated 29.12.2023 and the consequential notice dated 12.09.2024 are 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.

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

17.12.2024

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

To

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MOHAMMED SHAFFIQ, J.

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