IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.36970 of 2024
and
W.M.P. Nos.39924 and 39926 of 2024

Manangatti Pillai Ravi,
16/20, Gandhi Nagar,
Shanmuga Raja Street,
Ekkattuthangal, Chennai,
Tamil Nadu-600 032. ... Petitioner

Vs.

1.Assistant Commissioner (ST),
Guindy Assessment Circle,
Room No.255, Second Floor,
Integrated Commercial Taxes and
Registration Building, South Tower,
Nandanam, Chennai-600 035.

2.The Deputy Commissioner (ST),
GST-Appeal, Chennai-II,
Main Building, 2nd Floor,
Greams Road, Chennai-600 006. ... Respondents

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 file of the Respondents and quash the impugned order under Section 73 of the Tamil Nadu Goods and Service Tax Act, 2017/ Central Goods and Service Tax Act, 2017 including the summary of the order in Form GST DRC-07 both dated 26.12.2023 and having Reference Number:ZD331223207148U and its annexure dated 26.12.2023 in GSTIN:33ACPPR9154H1Z3/2017-2018 passed by the 1st Respondent for FY 2017-18 along with the acknowledgement in Form GST APL-02 dated 01.08.2024 issued passed by the 2nd Respondent under Rule 108 of Central Goods and Services Tax Rules, 2017/ Tamil Nadu Goods and Services Tax Rules, 2017 for the FY 2017-18.

For Petitioner : Ms.S.Abirami
for Mr.N.V.Balaji

For Respondents : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 26.12.2023 relating to the assessment year 2017-18.

2. It is the submitted by the learned counsel for the petitioner is registered under the Goods and Services Act, 2017. During the relevant period viz., 2017-18, the petitioner filed its return and paid the appropriate taxes. However, during the scrutiny of the petitioner's monthly returns, it was found that there was alleged mismatch between GSTR 2A and GSTR 3B.

3. It is submitted by the learned counsel for the petitioner that a notice in DRC-01 was issued on 30.09.2023 followed by reminders on 24.11.2023, 12.12.2023 and 19.12.2023. The petitioner has neither filed reply nor paid the

taxes, hence, the impugned order of assessment came to be passed confirming the proposal.

3. The impugned order is challenged on the premise that the notices and orders were uploaded on the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and thus unable to participate in the adjudication proceedings. It was submitted by the learned counsel for the petitioner that if granted with one final opportunity they would be able to explain the alleged discrepancy.

4. The learned counsel for the petitioner would then 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 they may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal.

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

a) The impugned order dated 26.12.2023 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 with 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.

05.12.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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To:
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MOHAMMED SHAFFIQ, J.

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