IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.36868 of 2024
and
W.M.P.No.39828 and 39829 of 2024

Tvl.Arasan Enterprises,
Represented by its Proprietor,
Mr.D.Prabhakar,
75, Chavati Street,
Issa Pallavaram,
Chennai - 600 044. ... Petitioner

Vs.

The State Tax Officer,
Chromepet Assessment Circle,
Integrated Commercial Tax Building (South Tower)
Room No.335, 3rd Floor,
Block No.19, T.S.No.2, Government Farm Village,
Nandanam, Chennai - 600 035. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in GSTIN:33AGTPD9099B1Z5/2018-19 dated 17.04.2024 and the connected order under Section 73 and the summary of the order in Form GST DRC-07 dated 17.04.2024 issued in Reference No.ZD330424140441X and quash the same as passed contrary to the provisions of the Central Goods and Services Tax Act, 2017 read with the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 and also passed in violation of the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.TNC Kaushik
Additional Government Pleader

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ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 17.04.2024 relating to the assessment year 2018-2019.

2. It is submitted by the learned counsel for the the petitioner that the petitioner is engaged in trading of blue metals. During the relevant period, the petitioner had filed its return and paid appropriate taxes. While scrutinizing the petitioner's return, the following discrepancies were found viz., (i) Mismatch the GSTR-3B and GSTR-09; (ii) Under declaration of ineligible ITC. Subsequently, notice was issued in DRC-01 to the petitioner on 28.12.2023 through GST Portal, followed by reminders on 06.02.2024 & 12.04.2024. However, the petitioner had neither filed its reply nor paid the tax amount. Hence, the impugned order came to be passed.

3. The impugned order is challenged on the premise that neither the show cause notices nor the impugned order of assessment has been served by tendering to the petitioner or by registered post, instead it was uploaded in the common portal. It was further submitted that the petitioner was unable to access the common portal and 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, he would be able to explain the alleged discrepancies.

5. 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.

6. 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 Additional Government Pleader appearing for the respondent does not have any serious objection.

7. In view thereof, the impugned order dated 17.04.2024 is set aside and the petitioner shall deposit 25% of the disputed tax within a period of four (4) 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 (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. If the above deposit is not paid or objections are not filed within the stipulated period, i.e., two weeks and four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

8. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

04.12.2024

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

To:
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MOHAMMED SHAFFIQ, J.

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