IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.37284 of 2024
and W.M.P.Nos.40304 and 40305 of 2024

Tvl.Vassi Hospitality Private Limited,
Represented by its Director, Mr.Sivagnanam ..Petitioner

Vs.

Assistant Commissioner (ST),
Alandur Assessment Circle (South-III)
Room No.325 Anna Salai, Nandanam,
Chennai-600 035. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, calling for the records in order passed by the respondent herein vide order No.ZD3307241881649 dated 15.07.2024 along with DRC-07 vide Reference No.GSTIN 33AABCS5044GIZO/2020-21 dated 15.07.2024 and quash the same to the extent of demand confirmed, as arbitrary, bad in law and consequently, direct the respondent to drop the proceedings in entirety and pass orders.

For Petitioner : Mr.M.Narasimha Bharathi

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

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 15.07.2024 relating to the assessment year 2020-21.

2. The petitioner is engaged in the supply of restaurant services and outdoor catering, renting of immovable properties, manpower recruitment agency, tour operators, air travel agency etc. 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 inspection of the petitioner' place of business, the following discrepancies were noticed:

i) mismatch between GSTR -1 and GSTR-3B

ii) Outdoor catering not reported and tax not paid

iii) Manpower services reported in GSTR-1 but not reported in GSTR-3B and the turnover not reported either in GSTR-3B or in GSTR-1

2.1. Pursuant thereto, a notice was issued in DRC 01A to the petitioner on

11.08.2023, followed by a show cause notice in DRC-01 on 20.12.2023. In response to the same, the petitioner had filed reply on 29.06.2024 and 08.07.2024, wherein it was submitted that in view of the financial crises, they were unable to pay the taxes, however the same was rejected. Further personal hearings were offered on 15.05.2024, 25.05.2024 and 30.05.2024. However, the petitioner has not availed opportunities of personal hearings. Hence, the impugned order came to be passed, confirming the proposal.

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 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. 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.

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

a) The impugned order dated 15.07.2024 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.

12.12.2024

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

To
The Assistant Commissioner (ST),
Alandur Assessment Circle (South-III)
Room No.325 Anna Salai, Nandanam,
Chennai-600 035.

MOHAMMED SHAFFIQ, J.

mrn

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