IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.37006, 37009, 37014, 37017 and 37021 of 2024
and
W.M.P. Nos.39975, 39977, 39979, 39980, 39983, 39984, 39986, 39988, 39991 and 39993 of 2024

C.S.Padamchand
34, Co-operative Colony,
Alwarpet, Chennai-600 018. ... Petitioner in all W.Ps.

Vs.

1.The Assistant Commissioner (ST),
Alwarpet Assessment Circle, Chennai-35.

2.The State Tax Officer,
Group-VII/ Intelligence-II,
Chennai-600 006.

3.The State Tax Officer(ST),
Chengalpattu Intelligence Division,
Station: No.870/2A, 1st Floor,
Kancheepuram High Road,
Thimmavaram, Chengalpattu-636 101. ... Respondents in all W.Ps.

PRAYER in W.P.No.37006 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the files of the 3rd Respondent herein in

GSTIN/33AAGPP9011Q1ZB/2017-18 in FORM GST DRC-07 proceedings in Order Reference No.ZD3307241538068 dated 12.07.2024 and quash the same.

PRAYER in W.P.No.37009 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the files of the 3rd Respondent herein in GSTIN/33AAGPP9011Q1ZB/2019-20 in FORM GST DRC-07 proceedings in Order Reference No.ZD330724157957V dated 12.07.2024 and quash the same.

PRAYER in W.P.No.37014 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the files of the 3rd Respondent herein in GSTIN/33AAGPP9011Q1ZB/2018-19 in FORM GST DRC-07 proceedings in Order Reference No.ZD330724157698V dated 12.07.2024 and quash the same.

PRAYER in W.P.No.37017 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the files of the 3rd Respondent herein in GSTIN/33AAGPP9011Q1ZB/2020-21 in FORM GST DRC-07 proceedings in Order Reference No.ZD330724158501J dated 12.07.2024 and quash the same.

PRAYER in W.P.No.37021 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the files of the 3rd Respondent herein in GSTIN/33AAGPP9011Q1ZB/2021-22 in FORM GST DRC-07 proceedings in Order Reference No.ZD330724154400R dated 12.07.2024 and quash the same.

For Petitioner in all W.Ps. : Ms.K.Siri Chandana

For Respondents in all W.Ps. : Mr.TNC Kaushik
Additional Government Pleader

COMMON ORDER

This batch of five writ petitions are filed challenging the impugned orders dated 12.07.2024 for the assessment years 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22 on the premise that the impugned orders are made in violation of principles of natural justice.

2. The petitioner herein is engaged in the business of service of distribution of rights to exhibit film. The petitioner is registered under Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. There was an inspection of the petitioner's place of business on 25.04.2023 on the basis of the authorisation issued by the Joint Commissioner (ST), Intelligence-II, Chennai dated 24.04.2023. During the course of such inspection, number of defects were noticed including excess input tax credit availed without furnishing certificate in terms of Circular No.183/15/2022 dated 27.12.2022. I do not propose to refer to the other defects as the other defects is either dropped or not proceeded with while passing the final orders of assessment.

3. Pursuant thereto, an intimation notice in GST DRC-01A was issued on 26.02.2024, followed by a notice in DRC-01 on 30.03.2024. Further, personal hearing notices were issued on 22.05.2024, 11.06.2024 and 22.06.2024. The petitioner had filed its reply however the impugned orders proceeds on the basis that the reply of the petitioner is inapplicable inasmuch as the petitioner has not filed the certificates of the suppliers as contemplated under Circular No.183 dated 27.12.2023.

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,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes. It is further submitted that there is bank attachment and the same may be lifted, to which, the learned Additional Government Pleader appearing for the respondents does not have any serious objection.

5. 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, to which the learned Government Additional Government Pleader appearing for the respondents does not have any serious objection.

6. By consent of both parties, the writ petitions stand disposed of on the following terms:

a) The impugned orders dated 12.07.2024 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 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 orders.

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 orders 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 orders of assessment shall stand restored.

8. 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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MOHAMMED SHAFFIQ, J.

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To:
1.The Assistant Commissioner (ST),
Alwarpet Assessment Circle, Chennai-35.

2.The State Tax Officer,
Group-VII/ Intelligence-II,
Chennai-600 006.

3.The State Tax Officer(ST),
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Station: No.870/2A, 1st Floor,
Kancheepuram High Road,
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W.P. Nos.37006 of 2024 and etc., cases

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