IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.37311 of 2024
and
WMP Nos.40323 and 40324 of 2024

Tvl. New Kathirvel Mudaliar Paints & Hardwares
Represented by its Authroised Signatory,
Eswaran : Petitioner

versus

The Assistant Commissioner (ST)
Commercial Taxes Department,
C.T.Building, First Floor,
Collectorate Campus,
Kancheepuram-631501 : Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari calling for the records GST No:33AAIFN720291Z1/2019-20 of the impugned order dated 06.08.2024 passed by respondent and quash the same and pass orders.

For Petitioner : Ms.L.Rifa Fathima
for Mr.G.Mohammed Aseef
Ms.Kalai Mani
Ms.Lakshmi Priya
Ms.R.Shakthi Priya
Ms.Praveen Raj
Mr.S.Gokulakrishnan

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

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 06.08.2024 relating to the assessment year 2019-20.

2. The petitioner is engaged in the business of production and distribution of paints and hardware things and is a registered dealer under the Goods and Services Tax Act. During the relevant period, the petitioner had filed its return and paid appropriate taxes. However, on examination of the information furnished in GSTR-3B, GSTR-01, GSTR-2A, EWB and other records available, it was found that excess input tax credit have been claimed on account of non-reconciliation of information declared in GSTR-3B and input tax credit on non-business transactions & exempt supplies.

2.1. Pursuant thereto, a show cause notice in DRC-01 was issued to the petitioner on 21.05.2024 and reminders on 25.06.2024 and 05.07.2024. However, the petitioner had not responded to any of the above notices / intimation, the impugned order was thus passed confirming the proposal. 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.

3. The learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of **Sree Manoj International Vs. Deputy State Tax Officer in W.P.No.10977 of 2024 dated 25.04.2024**, to submit that this court has remanded the matter back in similar circumstances subject to payment of 10% of the disputed taxes.

4. It was further submitted that the petitioner is ready and willing to pay 10% 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 Special Government Pleader appearing for the respondent does not have any serious objection.

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

a) The impugned order dated 06.08.2024 is set aside

b) The petitioner shall deposit 10% 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 10% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 10 % 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 10% 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 10% 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 10 % 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., 10% 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 will 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
The Assistant Commissioner (ST)
Commercial Taxes Department,
C.T.Building, First Floor,
Collectorate Campus,
Kancheepuram-631501

MOHAMMED SHAFFIQ, J.

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