IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.37508 of 2024
and
W.M.P.Nos.40541 and 40543 of 2024

M/s.Sharp Knit Faabs,
Rep. by Mr.Marappan Viswanathan,
Partner,
20A, Pillayar Koil Street,
Tiruppur 641 607. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Kongu Nagar Circle,
Tirupur. ... Respondent

PRAYER: 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 respondent in GSTIN:33ACBFS5557K1ZV/2017-18 dated 29.12.2023 and quash the same.

For Petitioner : Mr.V.Srikanth

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

The present writ petition has been filed challenging the impugned order passed by the respondent in GSTIN:33ACBFS5557K1ZV/2017-18 dated 29.12.2023, on the premise that the same is made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of manufacturing of knitted fabrics and is registered under the GST Act. During the relevant period of 2017-18, the petitioner has filed the returns and paid appropriate taxes. However, on verification of the returns it was found that there was mismatch between GSTR 3B and GSTR 2A.

3. It is submitted by the learned Counsel for the petitioner that an intimation in Form GST ASMT 10 was issued on 15.06.2023 followed by a notice in DRC 01A dated 14.09.2023 and a notice in DRC01 dated 19.09.2023. In response, the petitioner filed its reply dated 18.12.2023. However, the impugned order came to be passed, on the premise that no reply / objection was filed by the petitioner. It is also submitted by the

learned counsel for the petitioner that the petitioner had filed an appeal along with 10 % pre-deposit, which was however rejected on the ground of being barred by limitation. It is further 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.

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. The learned counsel for the petitioner would submit that the entire taxes have been paid and they may be granted an 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.

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

a) The impugned order dated 29.12.2023 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 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.

16.12.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
spp

To

The Assistant Commissioner (ST),
Kongu Nagar Circle,
Tirupur.

MOHAMMED SHAFFIQ, J.

spp

W.P. No.37508 of 2024
and
W.M.P.Nos.40541 and 40543 of 2024

16.12.2024