IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.36866 of 2024
and
WMP Nos.39826 and 39827 of 2024

Tvl Kapeed Infra
Represented by its Proprietor
Rep by its Proprietor
Mrs S Subbulakshmi : Petitioner

Vs

1.The State Tax Officer ST
Inspection Group VI
Office of the Joint Commissioner ST Intelligence
Kodumudi Assessment Circle, Erode

2.The Commercial Tax Officer
Kodumudi Assessment Circle
Erode Tamilnadu : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari calling for the records on the files of the impugned proceedings of the 1st Respondent Order Passed for the Assessment year 2022-23 in GSTIN 33KXEPS6135M1ZU/2022-2023 dated 03.09.2024 and the 2nd Respondent Consequential DRC-07 order bearing Ref No.ZD330924012521S dated 03.09.2024 and quash the same.

For Petitioner : Ms.R.Harshni
For Respondents : Mr.C.Harsha Raj,
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned orders in GSTIN 33KXEPS6135M1ZU/2022-2023 dated 03.09.2024 and Ref No.ZD330924012521S dated 03.09.2024, passed by the second respondent, on the premise that the same were made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is registered under the GST Act. During the relevant period of 2022-23, the petitioner has filed the returns and paid appropriate taxes. However, on inspection of petitioner's place of business, it was found that Input tax credit have been claimed on the strength of bogus invoices/e way bills, in other words, input tax credit has been claimed on fictitious transaction. Therefore, it was proposed to levy tax under Section 122 (1)(vii).

3. It is submitted by the learned counsel for the petitioner that an intimation in Form DRC01A was issued on 24.06.2024, followed by a show cause notice in Form DRC01 on 02.07.2024. Further, personal hearing were offered on 02.08.2024, 12.08.2024 and 19.08.2024. However, the petitioner had not responded to any of the above notices / intimation, the impugned orders were 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.

4. 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.

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

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

a) The impugned orders dated 03.09.2024 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.

7. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

04.12.2024

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

To
1.The State Tax Officer ST
Inspection Group VI

Office of the Joint Commissioner ST Intelligence
Kodumudi Assessment Circle, Erode

2.The Commercial Tax Officer
Kodumudi Assessment Circle
Erode Tamilnadu

MOHAMMED SHAFFIQ, J.

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