IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.37005 of 2024 and
W.M.P.Nos.39976 and 39978 of 2024

Anappadikkal Trading Company Pvt. Ltd.,
Rep. by its Manager (Finance and Operations)
K R Senthil Kumar
No.33 A S Kandasamy Layout
1st Street, Singaravelan Nagar Extension,
Thirupur, Tamil Nadu 641 601. ... Petitioner

Vs.

1.Assistant Commissioner (ST)
Vepery Assessment Circle,
Commercial Tax Department, No-1 (PAPJM)
Annex Building, Room No A-110,
First Floor, Greems Road,
Chennai 600 006.

2.Deputy Commissioner,
Zone IV
Commercial Tax Department,
No-1 (PAPJM)
Annex Building,
Fourth Floor, Greems Road,
Chennai 600 006.

3.Deputy Commissioner (ST) GST Appeals
Chennai, No-1 (PAPJM)
Annex Building,
Third Floor, Greems Road,

Chennai 600 006.

4.Federal Bank Ltd.,
Kamothe Branch,
Raigad, Mumbai,
Maharashtra 410 209,
Represented by its Branch Manager. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to the impugned assessment order and revenue recovery notices issued by the first respondent for the assessment year 2017-18 dated 19.07.2024, 19.11.2024 and 21.11.2024 and quash the same and further direct the first respondent from pursuing any coercive recovery steps including freezing of the bank accounts and garnishing proceedings against petitioner and their bank account No.21290200000315 held by the petitioner with the fourth respondent bank and not to realise any amounts form the petitioner's bank account.

For Petitioner : Mr.R.Jaikrishna

For respondents : Mr.V.Prashanth Kiran,
Government Advocate for R1 to R3.

ORDER

The present writ petition is filed challenging the impugned order dated 19.07.2024 passed by the first respondent relating to the assessment year 2017-18 and the consequential recovery notices dated 19.11.2024 and 21.11.2024.

2. It is submitted by the learned counsel for the petitioner that the petitioner is registered under the Goods and Services Tax Act, 2017. During the relevant period, the petitioner effected export supplies which would constitute zero-rate supplies under GST Act. The petitioner had claimed a refund which was duly granted in terms of Section 54 of the Central Goods and Services Tax Act. However, thereafter, it was allegedly found that the petitioner had availed duty drawbacks for the exports and also claimed a refund for the same period which according to the respondents is impermissible and would render the supplies ineligible to the benefit of a Zero-rated supply. Thus, an intimation in DRC-01 was issued on 27.09.2023, followed by reminders on 24.06.2024 and 08.07.2024. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. Hence, the impugned order came to be passed, confirming the proposal.

3. It is submitted by the learned counsel for the petitioner that neither the show cause notices nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded in the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. It is 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.

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.

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 Advocate appearing for the respondents does not have any serious objection.

6. It is submitted by the learned counsel for the petitioner that pursuant to the impugned order of assessment, recovery proceedings were initiated and the petitioner's bank accounts have been attached. It is further submitted that the petitioner was compelled to prepare a Demand Draft for a sum of Rs.50,98,553/-

. It is now submitted by the learned counsel for the respondent that the said Demand Draft has, in fact, been re-credited to the petitioner's bank account as it suffered from certain discrepancies.

7. In response, it is submitted by the learned counsel for the petitioner that if the said amount is credited, the petitioner's bank account would then be adequate to pay 25% of the disputed taxes inasmuch as the credit in the petitioner's bank account presently may not be sufficient to pay 25% of the disputed tax.

8. In view thereof, the bank attachment shall be lifted, on the Demand Draft amount being re-credited to the petitioner's account, the petitioner undertakes to deposit 25% of the disputed tax amount within a period of one week from the date the petitioner's bank account is re-credited with the Demand Draft amount. The impugned order dated 19.07.2024 and the consequential recovery notices dated 19.11.2024 and 21.11.2024 stands set aside. The impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of four weeks from the date of receipt of a copy of this order along with supporting documents/material. It is open to the petitioner to raise all grounds including that of limitation and any

other jurisdictional issues. 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. If the above deposit is not paid or objections are not filed within the period stipulated supra, the impugned order of assessment shall stand restored.

9. Accordingly, the writ petition stands disposed of. 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
shk

To:

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