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W.P. No.37505 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.37505 of 2024

and

W.M.P.Nos.40539 and 40540 of 2024

Kapil Matching Centre,
Rep. by its proprietor,
Dharmendra Kumar Sooda,
7/13 Bunder Street,
Parrys, Chennai 600 001.

... Petitioner

Vs.

1. The Assistant Commissioner (State Tax),
Kothawalchavadi Assessment Circle,
Integrated Building for Commercial Taxes
Department,
Chennai North Division, No.32,
Elephant Gate Bridge Road, Chennai 600 003.

2. The Branch Manager,
City Union Bank,
No.16, Ground Floor, 1st Avenue,
Near Chinthamani, Anna Nagar East,
Chennai 600 102.

... Respondents

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 1st respondent herein in GSTIN/33AAHPD9181C1Z0/2021-



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22 in Order Reference No.ZD330923067542B dated 12.09.2023 and quash the same.

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For Petitioner : Ms.K.Siri Chandana
For Respondents : Mr.TNC.Kaushik
Additional Government Pleader (for R1)

ORDER

The present writ petition has been filed challenging the impugned order passed by the respondent in Reference No.ZD330923067542B dated 12.09.2023, 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 wholesale textiles and is registered under the GST Act. During the relevant period of 2021-22, the petitioner has filed the returns and paid appropriate taxes. However, on verification of the returns certain defects were noticed inter alia including mismatch between GSTR-3B and GSTR-2A.

3. It is submitted by the learned counsel for the petitioner that a notice in DRC 01 dated 09.06.2023 was issued and opportunity of



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personal hearing was also granted. However, the petitioner neither filed any reply nor avail the opportunity of personal hearing. Hence the impugned order came to be passed. Aggrieved by the impugned order, 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 submitted by the learned counsel for the petitioner that neither the show cause notice 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 'Additional Notices and Orders' column of the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. It is also submitted by the learned counsel for the petitioner that pursuant to the impugned order the petitioner's bank account has been attached.

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 was further submitted that



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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. It is further submitted that subsequent to the passing of the impugned order, the petitioner had filed an appeal along with 10% pre-deposit and would request that the same may be adjusted towards 25% of the disputed tax, 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 12.09.2023 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



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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



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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.

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Speaking (or) Non Speaking Order
Index : Yes/ No
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MOHAMMED SHAFFIQ, J.

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