IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.37531 of 2024
and
W.M.P.Nos.40567, 40568 and 40569 of 2024

H R Enterprises
Represented by its Proprietor,
Raja ..Petitioner

Vs.

1.The Assistant Commissioner (ST),
Avadi Assessment Circle,
Station: Integrated Commercial Taxes Buildings,
(North Division), First Floor, Room No.124,
Elephant Gate Bridge Road, Vepery, Chennai-600 003.

2.State Bank of India,
Represented by its Branch Manager,
554, Avadi Poonamalle Main Road, UK Complex,
Parithupattu, Avadi District, Tiruvallur,
Tamil Nadu 600 071, (IFSC: SBIN0016788) ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent herein in GSTIN/33BDCPR0696D1ZO/2017-18 in GST DRC-07 proceedings dated 21.11.2023 and quash the same and pass orders.

For Petitioner : Mr.Siri Chandana

For Respondent : Ms.Amrita Dinakaran
Government Advocate
for first respondent

ORDER

The present writ petition is filed challenging the impugned order passed by the first respondent dated 21.11.2023 relating to the assessment year 2017-18.

2. The petitioner is engaged in works contract and is a registered person under the Goods and Services Act, 2017. During the relevant period, the petitioner filed its return and paid the appropriate taxes. However, during inspection in the petitioner's business place, the following discrepancies were noticed:

i) Mismatch between GSTR 3B and Form 26AS

ii) Mismatch between GSTR 3B and GSTR9/9C

2.1. Subsequently, an intimation was issued to the petitioner in ASMT-10 on 03.07.2023, followed by a show cause notice in DRC 01 dated 23.08.2023. Further, personal hearings were offered on 08.09.2023 and 25.10.2023. However, the petitioner had neither filed its reply nor availed the opportunities for personal hearings. Hence, the impugned order came to be passed, confirming the proposal. Aggrieved by the same, the petitioner had filed an appeal on 05.07.2024 along with 10 % pre-deposit, which was however rejected on the ground of being barred by limitation.

3. 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. The learned counsel for the petitioner would then 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***. 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. 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 his only request is that the same may be adjusted towards 25% of the disputed tax. It is submitted that pursuant to the impugned order of assessment, recovery proceedings were initiated and bank

accounts have been attached, and the same may be lifted, to which, the learned Government Advocate appearing for the respondent does not have any serious objection, while seeking liberty to verify the correctness of the statement relating to remittance made by the petitioner.

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

a) The impugned order dated 21.11.2023 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) It is open to the petitioner to produce material to show that the entire taxes are paid. 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.

5. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.12.2024

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

To
1.The Assistant Commissioner (ST),
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MOHAMMED SHAFFIQ, J.

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