IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.38093 of 2024
and
W.M.P. Nos.41216 and 41219 of 2024

Tvl.S S Enterprises Electricals,
Represented by its Proprietor Mr.Amutha Selvaraju ... Petitioner

Vs.

1.The State Tax Officer-1,
Office of Joint Commissioner (ST),
Chengalpattu Intelligence,
No.870/2A, 1st Floor, Kanchippuram High Road,
Thimmavaram Post, Chengalpettu-603101.

2.The State Tax Officer,
Ramapuram Assessment Circle,
No.46, Mylapore Taluk Office Building,
2nd Floor, Greenways Road,
Mandaveli, Chennai -28 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the impugned assessment order dated 19.07.2024 bearing GSTIN No.33AGRPA3240P1ZA/2019-2020 passed by the first respondent vide Reference No.ZD330724238120U and its subsequent assessment order dated 31.08.2024 issued by the second respondent having reference No.ZD3308243069358 and quash the same as arbitrary.

For Petitioner : Mr.A.Abdul Rahman

For Respondent : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 19.07.2024 passed by the first respondent and the subsequent order dated 31.08.2024 passed by the second respondent, relating to the assessment year 2019-20.

2. On being pointed out as to how both the orders were being challenged in this writ petition, learned counsel for the petitioner seeks to confine the prayer to the extent of challenging the assessment order dated 19.08.2024 and not pressing the prayer against the subsequent order dated 31.08.2024. He also seeks liberty to file a fresh writ petition challenging the order dated 31.08.2024 passed by the second respondent. The learned counsel has made an endorsement to that effect, which was not objected to by the learned Government Advocate for the respondents.

3. In view of the submissions made by the learned counsel for the petitioner and the endorsement made to that effect, the writ petition is dismissed

as not pressed, insofar as the order dated 31.08.2024 passed by the second respondent, with liberty as prayer for.

4. Now let us examine the impugned order dated 19.07.2024. The petitioner is engaged in works contract and is registered under the Goods and Services Act, 2017. During the relevant period, the petitioner filed its return and paid the appropriate taxes. Based on the authorisation issued by the Joint Commissioner (ST), Intelligence-I, Chennai, the petitioner's place of business was inspected. During the course of inspection, the following discrepancies were noticed:

i) Supplies to SEZs on payment of tax reported in GSTR-9

ii) Supplies to SEZs without payment of tax reported in GSTR -9

iii) Exempted of supply reported in GSTR-9

iv) Mismatch between Input tax credit table 8A and 8B and GSTR 9

v) Claimed excess Input tax credit in GSTR 3B in comparison with GSTR 2A

vi) Mismatch between GSTR 3B and GSTR -1

vii) Cancellation of E way bill

4.1. Pursuant thereto, a notice in DRC 01A was issued to the petitioner on 14.09.2023, followed by a show cause notice in DRC 01 on 27.12.2023 and reminders on 12.02.2024, 17.02.2024 and 22.02.2024. Further, personal hearing was offered on 10.04.2024. The petitioner filed its reply on 17.04.2024 seeking time and the same was rejected and the impugned order came to be passed, confirming the proposal.

5. 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. 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.

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

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

a) The impugned order dated 19.07.2024 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.

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

21.12.2024

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

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