IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.37872 of 2024
and
W.M.P. Nos.40941 and 40942 of 2024

Raja Cement
Represented by its Proprietor,
S.Raja,
No.16/130, Alagapuram Road,
Salem-636 016. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Alagapuram Circle, Salem. ... Respondent

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 file of the Respondent herein in GSTIN/33AKVPR2573C1ZX/2021-22 in GST DRC-07 proceedings in Order Reference No.ZD331123087765A dated 15.11.2023 and quash the same.

For Petitioner : Mr.M.Rajkumar

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 15.11.2023 relating to the assessment year 2021-22.

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 2021-22, the petitioner filed its returns and paid the appropriate taxes. The petitioner's place of business was inspected on 14.07.2022. During the course of such inspection, the following defects/discrepancies were noticed:

i) Tax liability on freight charges.

ii) Reversal of ITC on discounts received.

iii) GSTR-9 not filed.

iv) Penalty under Section 74.

v) Interest.

3. It is submitted by the learned counsel for the petitioner that a notice in DRC-01A was issued on 20.05.2023 and another notice in DRC-01 was issued on 24.06.2023. Further, personal hearing notice was issued on 29.09.2023. The petitioner had filed its reply on 24.07.2023, however the impugned order came to be passed confirming the proposal on the premise that they have not filed the ITC details nor certificates from the suppliers in respect of the alleged mismatch in ITC. 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. It is further submitted that subsequent to the passing of the impugned order, an appeal was also preferred and payment of 10% of disputed tax was made as pre-deposit and his only request is that the same may be adjusted towards 25% of the disputed tax, to which the learned Government Advocate 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 order dated 15.11.2023 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) 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 with 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.

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

17.12.2024

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

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To:
The Assistant Commissioner (ST),
Alagapuram Circle,
Salem.

<u>W.P. No.37872 of 2024</u>

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