IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.37623 of 2024
and
W.M.P. Nos.40658 and 40660 of 2024

M/s.David Raja Bharatgas Agency ... Petitioner
Rep. By its Proprietor Mr.A.U.Deepak,
GSTIN:33BOYPD4535C1Z1,
1/539, Vaniyambadi Main Road,
Muthulai Medu Ponneri Village,
Jolarpet, Tirupattur Taluk,
Vellore, Tamil Nadu-635 851.

Vs.

The Deputy State Tax Officer,
Thirupattur Assessment Circle,
No.66, Sama Nagar, Thirupattur-635 601. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records in the file of the impugned order uploaded electronically in common portal vide FORM DRC-07 No.ZD330324194451K dated 28.03.2024 and to quash the same with consequential relief to direct the respondent to defreeze all the 3 bank accounts maintained with the State Bank of India (IFSC Code:SBIN00016540) Agri Comm Branch, Thirupattur and refund the amount of Rs.5,30,000/- recovered from the bank account.

For Petitioner : Ms.S.Akila

For Respondent : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 28.03.2024 relating to the assessment year 2018-19 on the ground of violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is an authorised distributor of LPG Cylinders of Bharat Petroleum Corporation and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2018-19, the petitioner filed its returns and paid the appropriate taxes. However, on scrutiny of the returns it was found that there was mismatch between GSTR 3B, GSTR 1 and GSTR 9.

3. It is submitted by the learned counsel for the petitioner that a notice in DRC-01 was issued on 26.12.2023 followed by reminders on 01.02.2024, 15.02.2024 and 11.03.2024. Further, personal hearing notices were issued on 09.02.2024, 22.02.2024 and 18.03.2024. The petitioner had filed its reply on 04.07.2023, 21.07.2023, 26.08.2023 and 06.12.2023, however, the reply is stated to have no relevance to the above discrepancy which was pointed out. 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 discrepancy.

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 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 more than Rs.5,00,000/- has been recovered and her only request is that the same may be adjusted towards 25% of the disputed tax. It is further submitted that there is bank attachment and the same may be lifted, to which, the learned Additional Government Pleader appearing for the respondents 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 28.03.2024 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.

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

21.12.2024

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

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To:
The Deputy State Tax Officer,
Thirupattur Assessment Circle,
No.66, Sama Nagar, Thirupattur-635 601.

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