IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.37348 and 37351 of 2024
and
WMP Nos.40364, 40365, 40368 and 40369 of 2024

Shri Deepa Annamalai Distributors,
9/60, Therkathi Kadu,
Kolnaikenpatti,
Salem 636 452 : Petitioner in W.P. Nos.37348 and 37351 of 2024

versus

Commercial Tax Officer
Mettur Assessment Circle,
Mettur : Respondent W.P. Nos.37348 and 37351 of 2024

PRAYER in W.P. No.37348 of 2024: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari call for the records of the Respondent herein in Impugned order in GSTIN -33AGBPG0931D1Z9 /2019-20 dated 24.08.2024 and the consequential DRC-07 passed in Ref.No.ZD330824224062S dated 24.08.2024 and quash the same

PRAYER in W.P. No.37351 of 2024: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari call for the records of the Respondent herein in Impugned order dated 26.08.2024 issued by the respondent and the consequential Form GST DRC-07 in Ref No.ZD330824282986Q issued in GSTIN No.33AGBP0931D1Z9/2019-20 dated 30.08.2024 passed by the respondent for the FY 2019-20 and quash the same.

For Petitioner : Mr.G.Vardini Karthik

For Respondent : Mr.V.Prashanth Kiran,
Government Advocate (Tax)

COMMON ORDER

These writ petitions are filed challenging the impugned orders dated 24.08.2024 and 30.08.2024 on the premise that the same are made in gross violation of procedure contemplated under the GST Act and they are also made in violation of principles of natural justice.

2. The petitioner is a proprietary concern and is engaged in the business of supply of gas cylinders. The petitioner is registered under the GST Act. During the relevant period 2019-20, the petitioner had filed its return and paid appropriate taxes. On scrutiny of the petitioner's GSTR returns, it was noticed that there was mismatch between GSTR 1 and GSTR 3B.

2.1. Pursuant thereto, a notice in ASMT 10 was issued on 23.05.2022 whereby, it was stated that there was a discrepancy in discharge of the tax liability to the extent of Rs.4,18,183/- under the SGST and CGST Act respectively in all amounting to Rs.8,36,366/-. On the basis of ASMT-10, two different notices were issued namely DRC 01A dated 12.12.2023, followed by

DRC -01A dated 28.03.2024. Further, two show cause notices were issued in DRC 01 on 22.05.2024 and 31.05.2024. Pursuant to the above notices issued, proceedings were initiated and it culminated in two different impugned orders dated 24.08.2024 and 30.08.2024. The following chart would show the difference notices issued in respect of the above two proceedings:

Scrutiny proceedings under Section 61 for the FY 2019-20 arising out of show cause notice dated 22.05.2024			***Scrutiny proceedings under Section 61 for the FY 2019-20 arising out of show cause notice dated 31.05.2024***		
Date	particulars	Proposed demand	Date	particulars	Proposed demand
			23.05.2022	ASMT-10	
			12.12.2023	DRC-01A	Rs.25,99,384/-
			29.03.2024	Reply	
22.05.2024	DRC-01	Rs.17,42,622/-	31.05.2024	DRC-01	Rs.8,36,366/-
24.08.2024	Impugned order	Rs.17,42,622/- (Amount incl. of tax demand, interest and penalty)	26.08.2024	Impugned order	Rs.33,24,832/- - (Amount incl. Of tax demand, interest and penalty)
24.08.2024	DRC-07	Rs.17,42,622/-	30.08.2024	DRC-07	Rs.33,24,832/-

3. It is submitted by the learned counsel for the petitioner that the impugned proceedings insofar as it traverses beyond the show cause notice is hit by Section 75 (7) of the GST Act, which provides that the amount of tax, interest and penalty demanded in the impugned order shall not be excess of the amount specified in the show cause notice.

4. A reading of the above table would show that pursuant to the show

cause notice dated 22.05.2024, there was a total demand of Rs.17,42,622/-, which comprises of tax, interest and penalty, while pursuant to the show cause notice dated 31.05.2024, there was total demand of Rs.8,36,366/-. However, the impugned order dated 24.08.2024, which is made pursuant to the show cause notice dated 22.05.2024 confirms the entire tax, penalty, interest at Rs.17,42,622/-. However, the impugned order dated 30.08.2024 which is pursuant to the show cause notice dated 31.05.2024 has enhanced the demand to Rs.33,24,832/-. It was thus submitted that the impugned proceedings is hit by Section 75(7) of the Act. It was also submitted that the subject matter in respect of both the proceedings are one and the same and would thus be hit by the limitation/restriction in terms of Section 6(2) of the GST Act.

5. To the contrary, it was submitted by the learned Government Advocate for the respondents that the petitioner having not participated in the proceedings, now cannot question the correctness of the order.

6. It was further submitted that the petitioner is ready and willing to pay 10% of the disputed tax i.e. Rs.9,00,166/- 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 orders dated 24.08.2024 and 30.08.2024 are set aside

b) The petitioner shall deposit 10% of the disputed taxes i.e. Rs.9,00,166/- as admitted by the learned counsel for the petitioner and the respondents, 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. The respondents shall consolidate the proposal and pass one

consolidated order for the period 2018-19. It is open to the petitioner to raise all the issues including the lack of jurisdiction or otherwise.

9. There will 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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To
Commercial Tax Officer
Mettur Assessment Circle,
Mettur

MOHAMMED SHAFFIQ, J.

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