**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED :12.12.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. No.37781 of 2024**
**and**
**W.M.P.Nos.40853 and 40855 of 2024**

R.Ramarao ... Petitioner

Vs.

1.Assistant Commissioner (ST),
Koyambedu Assessment Circle,
No.4/109, Bangalore Highway Road,
Varadharajapuram,
Nazarethpet,
Chennai 600 123.

2.The Deputy Commissioner (ST),
GST-Appeal, Chennai -I,
C.T.Annexe Building,
No.1 Greams Road,
Chennai 600 096. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent's impugned order in Form GST DRC-07 bearing Ref.No.ZD331023012233C dated 04.10.2023 along with connected detailed order bearing Ref.(GSTN:33AADPR1102R1ZQ) /March 2018 dated 04.10.2023 and the consequent recovery notice dated 12.11.2024 issued by the first respondent, seeking to quash the same and consequentially direct the first respondent to provide the petitioner with an opportunity of hearing.

For Petitioner : M/S.D.S.Vipula

For Respondents : Mr.T.N.C.Kaushik,
Additional Government Pleader.

**ORDER**

The present writ petition is filed challenging the impugned order passed by the first respondent dated 04.10.2023 and the consequential recovery notice dated 12.11.2024.

2. The petitioner is registered under the Goods and Services Tax Act, 2017. During the relevant period, the petitioner filed its returns and paid the appropriate taxes. However, on perusal of the petitioner's monthly returns, it was *inter alia* noticed that there were certain discrepancies viz., under declaration and non-payment of RCM liabilities in respect of ITC claimed under the head “Inward Supplies Liable to Reverse Charge.

2.1. Pursuant thereto, a notice in Form GST DRC-01A was issued on 08.08.2023, followed by a Show Cause Notice in Form GST DRC-01 on 30.08.2023. Personal hearing was offered on 18.08.2023 and 11.09.2023. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. Hence, the impugned order came to be passed, confirming the proposal.

3. The impugned order is challenged on the premise that neither the show cause notices nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded under View Additional Notices column in the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings.

4. 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,*** 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 had filed an appeal dated 17.06.2024 before the Appellate Authority along with 10% pre-deposit, which has been rejected on the ground of being barred by limitation and their only request is that the same may be adjusted towards 25% of the disputed tax, 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 04.10.2023 and the consequential recovery notice dated 12.11.2024 are set aside.

b) The petitioner shall deposit 25% of the disputed taxes 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 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.

**12.12.2024**

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

To:

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**MOHAMMED SHAFFIQ, J.**

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