IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.37791 of 2024

GE TECH POWER CONTROLS
REPRESENTED BY ITS PROPRIETOR
ELUMALAI Petitioner

Versus

THE DEPUTY STATE TAX OFFICER,
KORATTUR ASSESSMENT CIRCLE
ROOM NO.332, 3RD FLOOR
NANDANAM, CHENNAI 600 035 Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari calling for the records relating to the impugned order in GSTIN 33AAKPE9169N1Z5/2017-18 dated 01.04.2024, passed by the Respondent, quash the same is illegal, improper, unreasonable, arbitrary

For Petitioner : Mr.Gopalakrishnan, B.

For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 01.04.2024 relating to the assessment year 2017-18.

2. The petitioner is engaged in supply of electrical equipment and is a registered dealer under the Goods and Services Tax Act. During the relevant period, the petitioner had filed its return and paid appropriate taxes. However, during the scrutiny of the petitioner's monthly return, the following discrepancies were noticed:

i) Mismatch between GSTR-2A and GSTR-3B.

ii) Mismatch between GSTR 1 and GSTR 3B

2.1. Subsequently, a show cause notice was issued to the petitioner on 28.09.2023. Further, personal hearing was offered on 15.12.2023 and reminder on 11.12.2023. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. Hence, the impugned order came to be passed.

3. It is submitted by the learned counsel for the petitioner that neither the show cause notice nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded in the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. It is further 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. It is further submitted by the learned counsel for the petitioner that they have already remitted the entire disputed tax though under IGST Act and they may be granted an opportunity before the adjudicating authority to put forth their objections to the proposal.

5. Taking into account the peculiar facts of the case, wherein, the petitioner has already remitted the entire disputed taxes, this Court is of the view that the petitioner may be granted one final opportunity to put forth his objections, which was not objected to by the learned Additional Government Pleader for the respondent, while seeking liberty to verify the correctness of the statement relating to remittance made by the petitioner.

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

a) The impugned order dated 01.04.2024 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) It is open to the petitioner to produce material to show that the entire taxes are paid. 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 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 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.

8. Accordingly, the writ petition stands disposed of. 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
mrn

To
THE DEPUTY STATE TAX OFFICER,
KORATTUR ASSESSMENT CIRCLE
ROOM NO.332, 3RD FLOOR
NANDANAM, CHENNAI 600 035

MOHAMMED SHAFFIQ, J.

mrn

W.P. No.37791 of 2024

17.12.2024