IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.37867 of 2024
and
W.M.P. Nos.40936 and 40937 of 2024

M/s.Jyothi Dresses,
Rep. By its Partner Thiru.M.Karthikeyan,
123, Valluvarkottam High Road,
Nungambakkam, Chennai-600 034. ... Petitioner

Vs.

Deputy Commercial Tax Officer,
Valluvarkottam Assessment Circle,
Commercial Taxes Building,
Greams Road, Chennai-600 006. ... 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 of the assessment proceedings in GSTIN:33AAAFJ2076P1Z7 dated 19.09.2024 for the year 2018-19 and to quash this impugned order passed by the respondent as above in DRC-07 dated 29.04.2024 and direct the respondent to pass fresh orders considering the reply letter filed by the petitioner in Form GST DRC-06 dated 21.03.2024 based on the amended provisions of Section 16(5) of CGST Act.

For Petitioner : Mr.C.Baktha Sironmani

For Respondent : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 29.04.2024 and the order dated 19.09.2024 whereby the request for rectification also stood rejected.

2. The petitioner is a dealer in dress materials / textiles and registered under the Goods and Services Tax Act, 2017. On verification of the monthly returns, the following discrepancies were found:

i) Excess claim of ITC;

ii) Under declaration of output tax.

2.1. Pursuant thereto, a notice in DRC-01 along with detailed show cause notice was issued on 26.12.2023 followed by reminder notice dated 20.03.2024. The petitioner had submitted its reply on 21.03.2024, wherein it was submitted that there was no excess claim of ITC inasmuch as the ITC which was booked in the Financial year 2017 was claimed in the Financial Year 2018-19. It was thus submitted that invoking Section 17(5) of the Act in respect of electrical goods cannot be justified. The petitioner had also availed off personal hearing on 26.03.2024, reiterating the objections. The impugned order dated 29.04.2024 came to be passed confirming the proposal.

3. Pursuant thereto, a rectification petition was filed inasmuch as the petitioner was of the view that the order dated 29.04.2024 suffers from error apparent on the face of the record, however the request for rectification came to be rejected. The rectification petition stood rejected on the premise that the petitioner's claim of ITC is not justified inasmuch ITC in respect of supplies made by suppliers/ taxable persons whose registration certificates has been cancelled or tax non-payers cannot be granted. It is submitted that the rejection of the rectification petition is unsustainable inasmuch the assessing authority ought to have seen that there is error apparent on the face of the record.

4. The learned counsel for the Respondent submitted that the petitioner ought to have preferred an appeal against the order and the writ petition ought not be entertained.

5. At this juncture, the learned counsel for the petitioner would submit that they had filed a rectification petition within 3 months from the date of receipt of a copy of the impugned order and that they have been vigilant. The learned counsel for the petitioner would then place reliance upon the recent judgment of

this Court in the case of **Sree Manoj International Vs. Deputy State Tax Officer in W.P.No.10977 of 2024 dated 25.04.2024**, to submit that this court has remanded the matter back in similar circumstances subject to payment of 10% of the disputed taxes.

6. It was further submitted that the petitioner is ready and willing to pay 10% of the disputed tax 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 respondent 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 order dated 29.04.2024 is set aside.

b) The petitioner shall deposit 10% 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 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 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 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. 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
mka

To:
The Deputy Commercial Tax Officer,
Valluvarkottam Assessment Circle,
Commercial Taxes Building,
Greams Road, Chennai-600 006.

MOHAMMED SHAFFIQ, J.

mka

W.P. No.37867 of 2024

17.12.2024