IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.37933 of 2024
and
W.M.P.Nos.41019 and 41020 of 2024

Tvl. Nehas
Represented by its Proprietor Beula ..Petitioner

Vs.

The Deputy State Tax Officer-I,
Valluvarkottam Assessment Circle,
No.1, 6th Floor, Annex Building,
Greams Road, Chennai-600 006. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, calling for the records of the impugned order of the respondent in GSTIN:33AJUPB4424G1ZE/2019-2020 dated 29.08.2024 and the consequential summary of order in Reference No:ZD3308242804854 dated 29.08.2024 and quash the same and consequently direct the respondent to entertain the records, documents and reply from the petitioner and pass orders after affording a personal hearing to the petitioner and pass orders.

For Petitioner : Mr.Haricharan

For Respondent : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 29.08.2024 relating to the assessment year 2019-20.

2. The petitioner is engaged in the services of providing beauty treatment. The petitioner is a registered dealer under Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. However, on verification of the monthly returns, the following defects were noticed:

i) Excess claim of input tax credit which is otherwise ineligible in terms of Section 17(5)

ii) Claim of input tax credit which is barred under Section 16(4)

iii) Claim of input tax credit from dealers whose registration certificate is allegedly cancelled.

2.1. Pursuant thereto, a show cause notice in DRC 01 was issued to the petitioner on 20.05.2024 and reminder on 19.07.2024. The petitioner had filed its reply on 23.08.2024. However, the same was rejected and the impugned order came to be passed, confirming the proposal.

3. It is submitted by the learned counsel for the petitioner that they had sought for time in view of the fact that the proprietor was hospitalized and he would also submit that one of the issues relate to denial of credit invoking Section 16(4) of the Act, which has been subsequently amended and this court in series of cases relied upon the subsequent amendment and remanded the matters back for redoing the amount keeping in view of the amendment invoking Section 16(5) of the Act.

4. Learned Special Government Pleader of the respondent would submit that the petitioner's may remit 10% of the disputed taxes in respect of issues other than Section 16(4), which was agreed to by the learned counsel for the petitioner.

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

a) The impugned order dated 29.08.2024 is set aside

b) The petitioner shall deposit 10% of the disputed taxes in respect of issues other than 16(4), 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 in respect of issues other than 16(4), 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.

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

19.12.2024

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

mrn

To
The Deputy State Tax Officer-I,
Valluvarkottam Assessment Circle,
No.1, 6th Floor, Annex Building,
Greams Road, Chennai-600 006.

MOHAMMED SHAFFIQ, J.

mrn

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