IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.37770 of 2024
and
WMP Nos.40841 & 40842 of 2024

Tvl.R.Palanisamy,
Contractor,
2/169A, Thottian Thottam,
Ponneri, Kottamangalam,
Udumalpet 642 201. ... Petitioner

Versus

The State Tax Officer
Udumalpet South Assessment Circle,
Udumalpet 642 126. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari, calling for the records of the Respondent in his proceedings in GSTIN:33AKJPP6655K1ZN/2018-2019 dated 21.05.2024 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan
For Respondent : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order dated 21.05.2024 passed by the respondent relating to the assessment year 2018-19.

2. Ms.Amrita Dinakaran, learned Government Advocate takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The petitioner is doing civil contract work for Government Department and 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 scrutiny of the returns, it was found that there was mismatch between GSTR-3B and GSTR-7.

3.1. Pursuant thereto, a notice in Form ASMT-10 dated 26.02.2024 was issued to the petitioner, followed by a notice in Form DRC-01A dated 06.03.2024 and a show notice in Form DRC-01 dated 03.05.2024 through GST portal to the petitioner, and thereafter, a personal hearing opportunity was also afforded to the petitioner. However, the petitioner had neither filed its reply nor paid the tax and also not availed an opportunity of personal hearing. Hence, the impugned order came to be passed, confirming the proposal.

4. 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.

5. 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***. It was further submitted that the petitioner is ready and willing to pay 25% 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.

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

a) The impugned order dated 21.05.2024 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) 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.

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

18.12.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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MOHAMMED SHAFFIQ, J.

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To
The State Tax Officer
Udumalpet South Assessment Circle,
Udumalpet 642 126.

W.P. No.37770 of 2024

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