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

**DATED : 13.12.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P.No.38140 of 2024**
**and**
**W.M.P.No.41273 of 2024**

M/s.MK Indutries,
Represented by its proprietrix,
Mrs.Mehalaiselvi ..Petitioner

Vs.

1.State Tax Officer,
Singanallur North Circle,
Commercial Taxes Building,
Dr.Balasundaram Road, Coimbatore 641018

2.Assistant Commissioner (ST) (FAC),
Singanallur North Circle,
Commercial Taxes Building,
Dr.Balasundaram Road, Coimbatore 641018 ..Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, to call for the impugned order of the first respondent passed in GSTIN:33AJBPM2536K1ZC/2018-19 dated 08.04.2024 and quash the same and pass orders.

For Petitioner : Ms.Divya A

For Respondent : Mr.G.Nanmaran
Special Government Pleader

**ORDER**

The present Writ Petition is filed challenging the impugned order passed by the first respondent dated 08.04.2024 relating to the assessment year 2018-19.

2. The petitioner is a dealer in pumps and related componenets 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. On verification of the E Way bill, it was noticed that E-Way bill have been generated without mentioning invoice values during the year 2018-19. Thus it was treated as suppression. The following documents are extracted hereunder:

On verification of E Way Bill generation details of the taxpayer, Tvl. MK Industries, Coimbatore (GSTIN 33AJBPM2535K1ZC) had generated E way bills without mentioning invoice values during the year 2018-19, for the following documents as follows:-

| E Way Bill No & Date | GSTIN of consignee | Name of the Consignee | Document No & Date | Invoice value |
|---|---|---|---|---|
| 581056822298 / 25.09.2018 | 29AATFA6277G1ZU | AUM TECHNO SPRAY | 359 & 25.09.2018 | 0 |
| 581059200500/ 05.10.2018 | 29AATFA6277G1ZU | AUM TECHNO SPRAY | 366 & 05.10.2018 | 0 |
| 581060974961/ 13.10.2018 | 29AATFA6277G1ZU | AUM TECHNO SPRAY | 370 & 13.10.2018 | 0 |
| 571071256512/ 04.12.2018 | 29AATFA6277G1ZU | AUM TECHNO SPRAY | 390 & 04.12.2018 | 0 |

Accordingly notices vide references 1st to 3rd cited were issued to the tax payer. The taxpayer has not filed any reply to the above notices and also fails to utilise the opportunity of personal hearing on 20.02.2023 and 14.06.2023.

Hence the demand as proposed in this office notice dated 18.01.2023 is confirmed and accordingly order is passed as follows:-

2.1. Pursuant thereto, a notice in DRC-01A was issued to the petitioner on 09.07.2022, followed by a show cause notice in DRC 01 on 18.01.2023. Further, personal hearings were offered on 20.02.2023 and 14.06.2023. However, the petitioner had neither filed its reply nor availed the opportunity of personal hearing. Hence, the impugned order came to be passed, confirming the proposal.

3. 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. It is further submitted by the learned counsel for the petitioner that they have already remitted the entire disputed tax and they 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, while seeking liberty to verify the correctness of the statement relating to remittance made by the petitioner.

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

a) The impugned order dated 08.04.2024 is set aside

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the 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 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.

5. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

**13.12.2024**

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

To
1.State Tax Officer,
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2.Assistant Commissioner (ST) (FAC),
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**MOHAMMED SHAFFIQ, J.**

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