



W.P. No.37984 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.37984 of 2024

and

W.M.P. Nos.41074 and 41075 of 2024

M/s.Mohamed Hussain
Proprietor of M/s.Lovely Pet Shop

... Petitioner

Vs.

1.Union of India,
Represented by its Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi-110 001.

2.Central Board of Indirect Taxes and Customs
Ministry of Finance,
Department of Revenue,
North Block
New Delhi -110 001.

3.The Superintendent of GST & CE
Range-I, Thuraipakkam Division,
Chennai South Commissionerate,
692 MHU Complex, Anna Salai,
Nandanam, Chennai-600 035

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, call for the records pertaining to the impugned order in original No.19/2023 GST (Supdt.) dated 28.04.2023 issued by the third respondent and quash the same and pass orders.



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For Petitioner : Mr.G.Derrick Sam
For Respondent : Mr.S.Gurumoorthy
Senior Panel Counsel

ORDER

The present Writ Petition is filed challenging the impugned order passed by the third respondent dated 28.04.2023 relating to the assessment year 2018-19.

2. 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 discrepancies were noticed:

- i) mismatch between GSTR 2 and GSTR 3B
- ii) Non reversal of the input tax credit used for the exempted supply

2.1. Pursuant thereto, a notice in ASMT -10 was issued to the petitioner on 17.06.2022, followed by a show cause notice in DRC-01 on 28.12.2022. Further, personal hearing was offered on 11.01.2023, 23.01.2023 and 20.02.2023. However, the petitioner had neither filed its reply nor paid the appropriate taxes. Hence, the impugned order came to be passed, confirming the proposal.



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3. It is submitted by the learned counsel for the petitioner that neither the show cause notices 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 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*. 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 Senior Panel Counsel appearing for the respondents does not have any serious objection.

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



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a) The impugned order dated 28.04.2023 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



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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.

6. There shall be no order as to costs. Consequently, connected



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miscellaneous petition is closed.

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Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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To:

- 1.Union of India,
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MOHAMMED SHAFFIQ, J.

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