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W.P. No.37977 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.37977 of 2024

and

W.M.P. No.41064 of 2024

M/s.Sri Kanaka Durga Sarees,
Represented by its Proprietor
Mr.Kannandahalli Govindachetty Murugan

... Petitioner

Vs.

1.The Deputy State Tax Officer,
Krishnagiri-II
Hosur, Krishnagiri.

2.The Deputy Commissioner of Commercial Taxes-Appeal
Salem Commissionerate,
No.1, Foulkes Compound, AnaiMedu Road,
Salem, Tamil Nadu-636 001.

... Respondents

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 first respondent in Ref No.ZD331223189761D dated 24.12.2023 and quash the same as illegal and consequentially remand back the matter to the first respondent for passing a fresh order after consideration of the explanation of the petitioner and pass orders.

For Petitioner

: Mr.Kaushik Narayanan V



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For Respondent

: Ms.Amrita Dinakaran
Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 24.12.2023 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 turnover and tax paid details with GSTR-2A and CMP-08 filed by the dealer, it was noticed that the sales declared were less than the purchase.

2.1. Pursuant thereto, a notice in DRC-01A was issued to the petitioner on 05.10.2023, followed by a show cause notice in DRC-01 on 23.11.2023. Further, personal hearing was offered on 22.12.2023. However, the petitioner had neither filed its reply nor paid the appropriate taxes. Hence, the impugned order came to be passed, confirming the proposal.

3. It is submitted by the learned counsel for the petitioner that neither the



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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 Government Advocate 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:

- a) The impugned order dated 24.12.2023 is set aside
- b) The petitioner shall deposit 25% of the disputed taxes as admitted by the



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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



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above condition viz., payment of 25 % of the disputed taxes.

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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 miscellaneous petition is closed.

21.12.2024

Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

mrn

To:

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Krishnagiri-II



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MOHAMMED SHAFFIQ, J.

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