**IN THE HIGHCOURT OF JUDICATURE AT MADRAS**

**DATED : 12.12.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P.No.37747 of 2024**
**and**
**W.M.P.Nos.40806 and 40809 of 2024**

Tvl.Surya Motors,
Represented by its partner,
Mr.Mahaveer Punmia,
No.173, Mount Poonamallee High Road,
Kattupakkam, Sriperumbudur,
Chennai 056.

... Petitioner

Vs.

The Assistant Commissioner (ST),
Poonamallee Assessment Circle,
Varadarajapuram, Nazarathpet, Chennai 123. ...Respondent

**PRAYER** : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records on the file of the responden tto quash the impugned assessment order dated 30.04.2024 bearing no.33ABGFS3211C1ZU/2018-19 passed by the respondent.

For Petitioner : Mr.J.Ashish

For Respondent : Ms.Amrita Dinakaran
Government Advocate

**ORDER**

The present writ petition is filed challenging the impugned order bearing No.33ABGFS3211C1ZU/2018-19 dated 30.04.2024, passed by the respondent.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of retailing the motor cycles and is registered under the GST Act. During the relevant period of 2018-19, the petitioner has filed the returns and paid appropriate taxes. However, on verification of the returns filed by the petitioner the following discrepancies were noticed:

(i) Excess availing of Input Tax Credit.

(ii)Mismatch between GSTR 8 and GSTR 1.

3. It is submitted by the learned counsel for the petitioner that an intimation in Form DRC 01 was issued on 31.01.2024 followed by a reminder on 03.04.2024. The petitioner has submitted its response and had filed certificates in terms of Circular No.183 in respect of 4 supplies. However, the impugned order of assessment accepted certificates in respect of two supplies

while finding that certificates relating to the supplies effected by Sri Global Motors and J.K.Honda suffered from certain discrepancies and therefore rejected the certificate and confirmed the proposal. The learned counsel for the petitioner would submit that they would request one final opportunity to furnish a fresh / corrected certificates.

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,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes.

5. 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. At this juncture the learned Government Advocate appearing for the respondent on instruction submitted that the disputed taxes works out to

Rs.12,72,842/- out of which the the petitioner has to pay 25%, to which the learned counsel for the petitioner does not have any objection.

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

a) The impugned order dated 30.04.2024 is set aside.

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

**12.12.2024**

NCC : Yes / No
Index : Yes / No
Internet : Yes
spp

To:

The Assistant Commissioner (ST),
Poonamallee Assessment Circle,
Varadarajapuram, Nazarathpet, Chennai 123.

**MOHAMMED SHAFFIQ, J.**

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