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# IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 21.12.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. No.38131 of 2024**
**and**
**W.M.P. No. 41264 of 2024**

Mrs.Ramalingam Mahalakshmi ... Petitioner

Vs.

1.The Commissioner,
Office of the Commissioner of GST &
Central Excise, (Appeals I),
26/1, Mahatma Gandhi Road,
Nungambakkam,
Chennai -600 034

2.The Assistant Commissioner,
Office of the Commissioner of GST &
Central Excise,
Thiruvottiyur Division,
Nungambakkam,
Chennai North Commissionerate ... 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 the second respondent original No.55/2022-23 dated 16.12.2022 and quash the order of the second respondent as illegal, arbitrary and unenforceable, consequentially remand back to the second respondent and pass a fresh speaking order within the time to be stipulated by this Court.

For Petitioner : Mr.Kaushik Narayanan N
For Respondent : Mr.S.Gurumoorthy
Senior Panel Counsel

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**ORDER**

The present writ petition is filed challenging the impugned order dated 16.12.2022 relating to the assessment year 2022-23.

2. The petitioner is engaged in the business of supply of food take away packets. During the relevant period, the petitioner has also discharged the appropriate VAT Taxes. While so, on the basis of the information received from the Central Board of direct taxes, which indicated that there is a turnover declared in income tax returns for the financial year 2016-17 and the petitioner has not registered and discharges service tax liability, the impugned adjudication proceedings were initiated under Finance Act, 1994.

2.2. Pursuant thereto, the petitioner was served with a show cause notice on 11.10.2021. Further, the petitioner was offered personal hearing on 21.10.2022, however, the petitioner did not respond to the notice nor availed an opportunity of personal hearing. 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 the petitioner may be granted one final opportunity to demonstrate that the levy of tax under the Finance Act, 1994 is without jurisdiction before the adjudicating authority.

4. Learned Senior Panel Counsel for the respondents would submit that the petitioner having not participated in the adjudication proceedings, and that these are essential question of fact whether the income disclosed under Income Tax represents consideration for services provided and liable to tax under the Finance Act, 1994 and therefore, the writ petition should not be entertained.

5. Having considered the submissions made by either side, this Court is of the view that the petitioner may be granted one final opportunity to put forth objections before the adjudicating authority, however subject to condition that the petitioner pays 25% of the disputed taxes, which was agreed by the learned counsel for the petitioner. It is submitted by the learned counsel for the petitioner that they had also paid close to 15% of the disputed taxes and his only request is that the same may be adjusted towards 25% of the disputed tax.

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6. In view thereof, the writ petition stands disposed of on the following terms:

a) The impugned order dated 16.12.2022 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.

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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 two (2) 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, two weeks and four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

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

**21.12.2024**

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

To:
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**MOHAMMED SHAFFIQ, J.**

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