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.38057 of 2024
and
W.M.P. Nos.41157 and 41159 of 2024

Tvl Rajagopalan Subash
Represented by its proprietor Rajagopal Subash ... Petitioner

Vs.

1.The State Tax Officer, Group-IV, Inspection,
Chengalpattu Intelligence Division,
Station No.870/2A, 1st floor, Kancheepuram High Road,
Thimmavaram, Chengalpattu- 603101.

2.The Appellate Deputy Commissioner (ST) (GST)
Chennai-II,
PAPJM Building, Greams Road,
Chennai-600 006. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the impugned order bearing GSTIN 33AMYPS2557E1ZL/2017-18 dated 19.01.2024 passed by the first respondent and quash the same being arbitrary, passed in violation of the principles of natural justice.

For Petitioner : Mr.G.Natarajan
For Respondent : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present petition is filed challenging the order dated 19.01.2024 on the ground of violation of principles of natural justice.

2. The petitioner is engaged in the business of works contract. 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. On the basis of the authorisation issued by the Joint Commissioner (ST), Intelligence-II, the petitioner's place of business was inspected on 24.03.2023. During the course of inspection, the following discrepancies were noticed:

i) Carry forward of TDS credit under VAT

ii) Turnover difference between returns and P& L Account

iii) Ineligible Input Tax Credit

2.1. Pursuant thereto, a notice in DRC-01A was issued to the petitioner on 19.09.2023, followed by a show cause notice on 25.10.2023. Further, personal hearing was offered on 02.01.2024. However, the petitioner had neither filed its reply nor paid the appropriate taxes. Hence, the impugned order came to be passed, confirming the proposal. Aggrieved by the same, the petitioner preferred an appeal, and the same was rejected on the ground that it is filed beyond the period stipulated under the Act for filing of appeal.

3. Learned counsel for the petitioner would submit that the impugned order suffers from error apparent on the face of the record inasmuch as it has rejected the petitioner's claim of input tax credit as ineligible, without any material.

4. The learned Government Advocate for the respondents 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*** and submit that the petitioner may be directed to pay 25% of the disputed tax.

5. Learned counsel for the petitioner submitted that subsequent to the passing of the impugned order, the petitioner had filed an appeal along with 10% pre-deposit, 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.

6. This is an ex parte order. This Court has been taking a consistent view, following the earlier orders of this Court that in similar circumstances, by placing 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, the matters could be remanded on complying with 25 % of the disputed taxes.

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

a) The impugned order dated 19.01.2024 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.

8. 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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