IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.38103 of 2024
and
W.M.P.Nos.41229, 41231 and 41235 of 2024

Shyamala V ... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Alagapuram Circle,
2nd Floor, Integrated Commercial Taxes Building,
Pitchards Road, Hasthampatty,
Salem 636 007.

2.The Bank Manager
City Union Bank Limited,
Ground Floor,
44, Brindavan Road,
Fairlands, Salem 636 016. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records in the impugned order dated 25.04.2024 with the reference ZD3304241935484 in the files of the first respondent and quash the same as manifestly, arbitrary, void, contrary and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India.

For Petitioner : M/s.Saitanya Kesan

For Respondents : Mr.C.Harsha Raj,
Additional Government Pleader for R1.

ORDER

The present writ petition is filed challenging the impugned order passed by the first respondent dated 25.04.2024 relating to the assessment year 2018-19.

2. It is submitted by the learned counsel for the petitioner that the petitioner is the proprietrix of Laxmin Narasimma Handloom and is registered under the Goods and Services Tax Act, 2017. During the relevant period of 2018-19, the petitioner filed its returns and paid the appropriate taxes. However, on verification of the petitioner's monthly return, it was noticed that there were certain discrepancies between GSTR-3B and GSTR-2A.

3. It is submitted by the learned counsel for the petitioner that an intimation in FORM GST DRC-01 was issued on 31.01.2024, followed by reminder on 13.04.2024. Further, personal hearing was offered on 16.04.2024. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. Hence, the impugned order came to be passed, confirming the proposal.

4. It is submitted by the learned counsel for the petitioner that the petitioner's registration certificate was cancelled on 01.06.2020 and therefore, the

petitioner had no occasion to check the GST Portal. Further, neither the Show Cause Notice 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.

5. 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. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that they may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal. It is submitted that there is bank attachment and the same may be lifted to which the learned Additional Government Pleader appearing for the first respondent does not have any serious objection.

6. In view thereof, the impugned order dated 25.04.2024 is set aside and the petitioner shall deposit 25% of the disputed tax within a period of four weeks from the date of receipt of a copy of this order. The impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of four 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 first respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the above deposit is not paid or objections are not filed within the stipulated period, i.e., four weeks from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored. It was submitted that pursuant to the impugned order of assessment, recovery proceedings were initiated and bank accounts have been attached. In view of the order passed herein, the bank attachment shall be lifted forthwith on complying with the above condition i.e., payment of 25% of disputed taxes within a period of two weeks from the date of receipt of a copy of this order.

7. Accordingly, the writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

16.12.2024

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

MOHAMMED SHAFFIQ, J.

shk

To:

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