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.38077 of 2024
and
W.M.P. Nos.41192 and 41194 of 2024

AR Supermarket
No.2/177, Raja Garden, 2nd Street,
Kottivakkam,
Chennai-600 041 ... Petitioner

Vs.

Deputy State Tax Officer-I (ST),
O/o. The Assistant Commissioner (ST),
Thiruvanmiyur Assessment Circle,
No.242, Second Floor,
Integrated Building of Commercial Taxes
and Registration Department,
Fanepet, Chennai-600 035 ... Respondent

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 respondent leading to issuance of impugned order dated 30.12.2023 vide GSTIN/33AAWFA0904D1ZU/2017-2018 and quash the same and direct the respondent to pass order after considering the reply to be filed by the petitioner.

For Petitioner : Mr.Sathyanarayanan

For Respondents : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present petition is filed challenging the order dated 30.12.2023 passed by the respondent relating to the assessment year 2017-18.

2. The petitioner is engaged in the business of retail trading of vegetables, fruits, milk, egg and other perishable commodities. 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 verification of the monthly returns, it was found that there was mismatch between GSTR-3B and GSTR-2A/2B.

2.1. Pursuant thereto, a show cause notice in DRC-01 was issued to the petitioner on 29.09.2023. Further, personal hearing was offered on 16.10.2023. 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 the petitioner had stopped carrying on business on the basis of an application filed by the petitioner, seeking to cancel the registration certificate. The registration

certificate has also stated to be cancelled vide proceedings 11.01.2019. It was submitted that the notices for the personal hearing was also uploaded only in the web portal.

4. In view of that fact that the petitioner had already stopped carrying on business on the basis of cancellation of registration certificate and this Court has been taking a consistent view, following the earlier orders of this Court, 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 10.06.202,*** the matters could be remanded on complying with 25 % of the disputed taxes. Therefore, the petitioner may be granted one final opportunity to put forth its objections before the adjudicating authority, however subject to condition that the petitioner pays 25% of the disputed taxes, which was agreed to by the learned counsel for the petitioner.

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

a) The impugned order dated 30.12.2023 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.

6. 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:
The Deputy State Tax Officer-I (ST),
O/o. The Assistant Commissioner (ST),
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MOHAMMED SHAFFIQ, J.

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