IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.38985 of 2024
and
W.M.P. Nos.42225, 42230 and 42226 of 2024

Gunin Infrastructures LLP
Represented by its authorised signatory
Mr.Shailesh Kumar Shukla,
SY No.9 and 10, 35, Karisandiram Village,
Shoolagiri Taluk,
Krishnagiri-635 105. ... Petitioner

Vs.

1.Deputy Commercial Tax Officer-1,
Hosur (North)-II Circle,
Krishnagiri Zone, Hosur Division,
Commercial Tax Office,
Sanasandiram, Bangalore Krishnagiri NH44,
Hosur-635 109.

2.Assistant Commissioner (ST),
Hosur (North-1) Circle,
Krishnagiri Zone, Hosur Division,
Commercial Tax Office,
Sanasandiram, Bangalore Krishnagiri NH 44,
Hosur-635 109.

3.Assistant Commissioner (ST),
Hosur (North-2) Circle,
Krishnagiri Zone, Hosur Division,

Commercial Tax Office,
Sanasandiram, Bangalore Krishnagiri NH 44,
Hosur-635 109.

4.HDFC Bank,
D-54, Siddi Vinayaka Ashok Marg,
C-Scheme, Jaipur,
Rajasthan-302 001. ... 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 No.ZD330524334296G dated 31.05.2024 passed by the 1st Respondent under Section 73/74 of the Central Goods and Services Tax Act, 2017 read with the corresponding provision under the Tamil Nadu Goods and Services Tax Act, 2017 for the tax periods November 2018 to March 2019, and quash the same.

For Petitioner	: Mr.V.Srinivasan
For Respondents 1 to 3	: Ms.Amrita Dinakaran Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 31.05.2024 for the period 2018-19 on the premise that it is made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is registered under the Goods and Services Tax Act, 2017. During the relevant period 2018-19, the petitioner filed its returns and paid the appropriate

taxes. There was an audit of the petitioner's place of business under Section 65 of the Tamil Nadu Goods and Services Tax Act, 2017. During the course of audit, it was found that there was mismatch between GSTR 2A and GSTR 3B.

3. It is submitted by the learned counsel for the petitioner that a notice in GST ADT-01 was issued on 05.06.2023 and another notice in DRC-01 on 30.12.2023. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. It is submitted by the learned counsel for the petitioner that neither the show cause notices 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.

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 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 further submitted that there is bank attachment and the same may be lifted, to which the learned Government Advocate appearing for the respondent does not have any serious objection.

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

a) The impugned order dated 31.05.2024 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 with 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.

20.12.2024

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

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<u>MOHAMMED SHAFFIQ, J.</u>

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