IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.38624 of 2024
and
WMP Nos.41830 & 41833 of 2024

GRN SONS
Represented by its Managing Partner,
Mr. Aravindan Ramasamy,
99/46, Thiruvalluvar Nagar,
Mogappair, Tiruvallur,
Tamil Nadu 600 037. ... Petitioner

Versus

1. Assistant Commissioner (ST),
   JJ Nagar Assessment Circle,
   Chennai 600 035.
2. Deputy State Tax Officer- 1 (ST)
   JJ Nagar Assessment Circle, Chennai 600 035. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorarified Mandamus, calling for the records leading to the issuance of assessment order bearing reference GSTIN:33AARFG3592Q1ZK/2017-18 dated 14.12.2023 by the Second Respondent herein and quash the same and direct the First Respondent herein to drop the proceedings in pursuance of the arrears notice bearing reference No.GSTIN/33AARFG3592Q1ZK dated 13.11.2024.

For Petitioner : Ms.B.Chandrika
For Respondents : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 14.12.2023 passed by the second respondent relating to the assessment year 2017-18.

2. Mr.G.Nanmaran, learned Special Government Pleader takes notice on behalf of the respondents. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The petitioner is engaged in the business of leasing and renting of furniture and providing other business auxiliary services. 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. However, on verification of the returns, it was found that there was mismatch between GSTR-3B and GSTR-2A.

3.1. Pursuant thereto, a show notice in Form DRC-01 dated 11.09.2023 was issued to the petitioner through GST portal, followed by an opportunity of personal hearing. However, the petitioner had neither paid the tax nor availed an opportunity of 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 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 further 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***. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that he may be

granted one final opportunity before the adjudicating authority to put forth their objections to the proposal, to which, the learned Special Government Pleader appearing for the respondents does not have any serious objection.

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

a) The impugned order dated 14.12.2023 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) 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 second 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.

g) In view of the above order, the recovery notice dated 13.11.2024 issued by the first respondent would also no longer survives, the same shall be lifted/withdrawn on complying with the above condition viz., payment of 25 % of the disputed taxes.

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

18.12.2024

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

1. Assistant Commissioner (ST),
   JJ Nagar Assessment Circle,
   Chennai 600 035.
2. Deputy State Tax Officer- 1 (ST)
   JJ Nagar Assessment Circle, Chennai 600 035.

MOHAMMED SHAFFIQ, J.

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