IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.38627 of 2024
and
WMP Nos.41839 and 41841 of 2024

M/s.Vendiggee Engineering Projects Private Limited,
Represented by its Managing Director ..Petitioner

Vs.

1.The Deputy Commissioner (CT)
PAPJM Building,
Greams Road,
Chennai 600 006

2.Commercial Tax Officer,
(Nanganallur:South III: Chennai South :Tamil Nadu)
Integrated Commercial Tax Building,
No.537, Fanepet, Nandanam,
Chennai- 600 035. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, calling for the concerned from the respondents, quash the order of the second respondent dated 24.01.2024 bearing Ref No.ZD330124110469R and the order of the first respondent dated 24.10.2024 bearing Ref.No.ZD3310241805250 as illegal, arbitrary, contrary to law and consequently direct the respondents to refund Rs.3,25,972/- and Rs.16,913/- recovered from the petitioner in all Rs.3,42,885/- along with interest within the time frame stipulated by this Court.

For Petitioner : Mr.R.Kamatchi Sundaresan

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 24.10.2024 relating to the assessment year 2018-19.

2. The petitioner is engaged in civil engineering construction project and is a registered 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 monthly returns, it was noticed that there was mismatch between GSTR 3B and GSTR2A/2B.

2.1. Pursuant thereto, a notice in ASMT 10 was issued to the petitioner on 10.07.2023, followed by a show cause notice in DRC-01 on 03.10.2023. Further, personal hearing were offered on 22.11.2023, 02.12.2023 and 15.12.2023. However, the petitioner had neither filed its reply nor availed the opportunity for personal hearing. Hence, the impugned order came to be passed, confirming the proposal. Aggrieved by the same, the petitioner had filed an appeal and the same was rejected on the ground of barred by limitation.

3. 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.

3. 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 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. It is submitted that out of the total demand of Rs.7,04,334/-, which

comprises of tax, interest and penalty, the tax liability works out to Rs.3,59,798/-, out of which, a sum of Rs,3,42,885/- has been recovered, which is more than 95% of the demand relating to taxes, 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.

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

a) The impugned order dated 24.10.2024 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.

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

19.12.2024

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

To
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MOHAMMED SHAFFIQ, J.

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