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.38469 of 2024 and
W.M.P.No.41659 and 41661 of 2024

M/s.New India Super Market,
Rep by its proprietor,
Mr.Sarjun Ahamed,
No.53 Periyar Street,
Chengalpattu- 603 001. ...Petitioner

Vs.

1. The Assistant Commissioner (ST),
Chengalpattu Assessment Circle,
1st Main Road, Anna Nagar,
Chengalpattu 001.
2. The Deputy Commissioner (CT),
On Behalf of Appellate Authority,
Chengalpattu. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the records on the file of the respondent and to quash the impugned order dated 10.02.2024 bearing GSTIN no.33GEGPS8313G1ZC/2018-19 passed by the 1st respondent and its consequential appeal rejection order dated 23.10.2024 bearing GSTIN no.33GEGPS8313G1ZC in form GST APL-02 passed by the 2nd Respondent as arbitrary.

For Petitioner : Mr.Sanaullah
For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order dated 10.02.2024 passed by the first respondent relating to the assessment year 2018-19 and also the consequential appeal rejection order dated 23.10.2024 passed by the second respondent.

2. Mr.V.Prashanth Kiran, learned Government Advocate 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.

3. The petitioner is engaged in the business of retailing the soap, rice, seeds, bread and pastries. 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 scrutiny of the returns filed by the petitioner, it was noticed that there was mismatch between GSTR-3B and GSTR-2A.

3.1. It is submitted by the learned counsel for the petitioner that, a notice in Form ASMT 10 was issued to the petitioner on 19.05.2023 through GST Portal, followed by a show cause notice in Form DRC-01 to the petitioner on 23.11.2023. Pursuant thereto, two remainder notices dated 11.01.2024 & 26.01.2024 respectively were issued to the petitioner through common portal and personal hearing opportunities were also granted to the petitioner on 22.01.2024 and 05.02.2024. However, the petitioner had neither filed its reply nor availed opportunities of personal hearing. Hence, the impugned order came to be passed, confirming the proposals. Aggrieved by the said order, the petitioner had preferred an appeal on 25.05.2024 before the Appellate Authority and the same was dismissed on 23.10.2024 on the premise it is bared by limitation. Further, he would submit that the petitioner had already remitted 10% of the disputed tax as pre-deposit for filing an appeal.

4. The learned counsel for the petitioner would further submit that notices and orders were uploaded under the "additional notices" tab on the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and thus unable to

participate in the adjudication proceedings. It is also 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 Government Advocate 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 10.02.2024 is set aside.

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondents, 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 from 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 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 to be paid for compliance of the direction of 25% of the disputed taxes after deducting the sums already paid and payment by the petitioner of the balance amount 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 first 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. Accordingly, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

18.12.2024

Speaking (or) Non Speaking Order
Neutral Citation: Yes/No
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MOHAMMED SHAFFIQ, J.

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To
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Chengalpattu Assessment Circle,
1st Main Road, Anna Nagar,
Chengalpattu 001.
2. The Deputy Commissioner (CT),
On Behalf of Appellate Authority,
Chengalpattu.

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