IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.38234 of 2024
and
W.M.P. Nos.41370 and 41372 of 2024

Sri Arunachala Cartons,
Represented by its Proprietor Mr.Sivakumar Sivasankaran,
No.9, Bharathi Nagar, 1st Street,
Korrukupet, Chennai,
Tamil Nadu-600 021. ... Petitioner

Vs.

1.The Deputy Commissioner (ST),
GST Appeal Chennai,
Greams Road, 2nd Floor,
Room No.210, Chennai.

2.The Assistant Commissioner (ST),
Washermenpet Assessment Circle,
No.32, Integrated Commercial Taxes Office Complex,
Elephant Gate Bridge Road, Chennai-600 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records having reference No.ZD331223229253V dated 27.12.2023 in GSTIN33BVMPS2191E1ZG/2017-18 for the FY 2017-18 and quash the same as illegal contrary to the provisions of the GST Act and in violation of principles of natural justice and fair play and direct the 1st Respondent to take the appeal having reference No.ZD331024121251A filed on 16.08.2024 on record and afford opportunity to the petitioner.

For Petitioner : Mr.Pranav Jain

For Respondents : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 27.12.2023 relating to the assessment year 2017-18.

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 2017-18, the petitioner filed its returns and paid the appropriate taxes. However, during the scrutiny of the petitioner's monthly return, it was found that the petitioner has wrongly availed input tax credit.

3. It is submitted by the learned counsel for the petitioner that a notice in DRC-01 was issued on 14.09.2023 followed by a reminder dated 15.12.2023. The petitioner submitted its reply on 22.12.2023, however the same was rejected on the premise that explanation offered was not acceptable. 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. It was further 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/withdrawn, to which, the learned Additional Government Pleader appearing for the respondents does not have any serious objection.

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

a) The impugned order dated 27.12.2023 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 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.

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

13.12.2024

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

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To:
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