IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.38694 of 2024
and
W.M.P.Nos.41886, 41887 and 41888 of 2024

Sri Dharshini Trading Company,
1st Floor Shop No.3, 20/4, K.S.Complex,
Suramangalam Main Road,
Salem, Tamil Nadu, 636 005
Represented by its Authorized Signatory
Mrs.Parvati
Nareshkumar ... Petitioner

Vs.

1.Assistant Commissioner (ST),
Airisipalayam Circle,
Salem, Tamil Nadu.

2.The State Tax Officer (ST),
Commercial Tax Department,
Arisipalayam Circle,
Salem.

3.Karur Vysya Bank,
Represented by its Manager,
No.6/68, Anna Nagar,
Paranathy Road, Namakkal 637 002. ... 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 of the first respondent in the demand order passed in GSTIN-33ACHFS6533M1ZR/2017-18 dated 26.10.2023 and the consequential DRC-07 order dated 26.10.2023 and DRC-13 notice dated 05.09.2024 of the second respondent, quash the same, further direct the respondent to reassess the above orders.

For Petitioner : M/s.G.Dhanamadri for
M/S.Agam Legal

For Respondents : Mr.G.Nanmaran,
Special Government Pleader.

ORDER

The present writ petition is filed challenging the impugned order dated 26.10.2023 passed by the respondent relating to the assessment year 2017-18.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of steel plating, TMT bars, sheets and related products and is registered under the Goods and Services Tax Act, 2017. During the relevant period viz., 2017-18, the petitioner filed its returns and paid the appropriate taxes. However, during the scrutiny of the petitioner's return, it was noticed that that there were certain discrepancies between GSTR-3B and GSTR-2B.

3. It is submitted by the learned counsel for the petitioner that an

intimation in DRC-01A was issued on 13.09.2023, followed by a notice in DRC-01 on 20.09.2023. Further, personal hearing was offered on 04.10.2023. However, the petitioner had neither filed its return nor availed the opportunity for a 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 the petitioner's registration certificate was cancelled on 03.04.2021, therefore, the petitioner has no occasion to check the GST portal. It is submitted 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.

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,*** 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, to which the learned Special Government Pleader appearing for the respondents does not have any serious objection.

6. It is submitted by the learned counsel for the petitioner that pursuant to the impugned order of assessment, recovery proceedings were initiated and the petitioner's bank accounts have been attached. It is further submitted that if the bank attachment is lifted, the petitioner would be in a position to remit 25% of the disputed taxes.

7. In view thereof, it is open to the respondents to appropriate 25% of the disputed tax and on such appropriation, the bank attachments shall be lifted. In the event, funds available in the petitioner's bank are insufficient to meet the said 25% of the disputed taxes, the petitioner shall remit the balance of 25% of the disputed tax, within a period of four weeks from the date of receipt of a copy of this order. On complying with the above condition, the impugned order dated 26.10.2023 shall be set aside. The impugned order of assessment shall be treated

as show cause notice and the petitioner shall submit its objections within a period of four 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 respondents and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. If the above deposit is not paid or objections are not filed within the stipulated period, i.e., four weeks from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

8. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

17.12.2024

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

MOHAMMED SHAFFIQ, J.

shk

To:

1.Assistant Commissioner (ST),
Airisipalayam Circle, Salem, Tamil Nadu.

2.The State Tax Officer (ST),
Commercial Tax Department,
Arisipalayam Circle, Salem.

3.Karur Vysya Bank,
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