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W.P.No.38477 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

**W.P. No.38477 of 2024
and
W.M.P.Nos.41672 and 41674 of 2024**

Tvl.Jayamurugan Engineering Works
Represented by its proprietor Mr.C.Jayamurugan,
No.1, Pooniamman Kovil Opposite,
Thirupattur Main Road,
Irumathur,
Dharmapuri 635 201.

... Petitioner

Vs.

The Deputy State Tax Officer – 2 (FAC),
Harur Assessment Circle 636 903.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the respondent herein in GSTIN/33AZSPJ2705Q1ZV/2017-18 in order Reference No.ZD330624041852I dated 06.06.2024 and quash the same.

For Petitioner : Mr.N.Chandirasekar

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



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ORDER

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2. The petitioner is engaged in the manufacture of coconut fibre machinery and is registered under the Goods and Services Tax Act, 2017. During the relevant period of 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 there was a defect in Sales Suppression.

2.1. Pursuant thereto, a notice in ASMT-10 was issued on 02.05.2023, followed by notices in DRC-01A on 18.07.2023 and DRC-01 on 21.08.2023. Personal hearing was offered on 27.10.2023 and 06.05.2024. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. Hence, the impugned order came to be passed, confirming the proposal.

3. The impugned order is challenged on the premise 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 under View Additional Notices / Orders tab in the GST Portal, thereby, the



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petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings.

4. 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.. The learned counsel for the petitioner would then 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 respondent 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 06.06.2024 is set aside.

b) The petitioner shall deposit 25% of the disputed taxes as admitted by



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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.

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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.

16.12.2024

Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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MOHAMMED SHAFFIQ, J.

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To:

The Deputy State Tax Officer – 2 (FAC),
Harur Assessment Circle 636 903.

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