IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.38555 of 2024
and
W.M.P.Nos.41758 and 41759 of 2024

M/s.Nagarathinam Yashwanth Rao,
Proprietor of AJM & CO,
Old No.256/1, New No.286/1,
GST Road, Chrompet,
Chennai 600 044. ... Petitioner

Vs.

The Deputy Commissioner of CGST & Central Excise,
Pallavaram Division,
Chennai Outer Commissionerate,
Sri Devi Temple Towers,
No.6, 2nd Main Road, Sembakkam,
Chennai 600 073. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records relating to the impugned proceedings passed by the respondent in Order-In-Original No.4/2022-ST dated 01.11.2022 to quash the same.

For Petitioner : M/s.R.Hemalatha

For Respondent : Mr.T.Ramesh Kutty,
Senior Standing Counsel.

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 01.11.2022 on the premise that the same is made in violation of principles of natural justice.

2. The petitioner is engaged in providing construction services (other than residential complexes) including works contract services and is registered under the Goods and Services Tax Act, 2017. During the relevant period viz., 2016-17 to 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 the petitioner had failed to submit its return.

2.1. Pursuant thereto, a Show Cause Notice was issued on 19.04.2022, treating the income disclosed in the Income Tax return as representing the taxable value of the service liable under Section 73 of the Finance Act, 1994. However, the petitioner, after requesting for time, vide letter dated 10.08.2022, did not furnish any documents and thus the impugned order came to be passed, confirming the proposal.

3. It is submitted by the learned counsel for the petitioner that the taxable event under the Income Tax Act and the Goods and Service Tax Act are different. It is further submitted that if the petitioner is provided with an opportunity, they would be able to explain how the impugned order of assessment, a best judgment assessment on the basis of income disclosed under the Income Tax returns, suffers from serious infirmities proving fatal to the validity of the said order.

4. The learned counsel for the respondent would submit that the writ petition ought not to be entertained inasmuch as the best judgment assessment was made as the petitioner had failed to submit any reply.

5. It is submitted that one cannot adopt the values of income disclosed in the Income Tax returns as representing the taxable value of supplies under the GST Act inasmuch as the taxable events are entirely different. 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 Senior Standing Counsel appearing for the respondent does not have any serious objection.

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

a) The impugned order dated 01.11.2022 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.

7. 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
shk

To:

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MOHAMMED SHAFFIQ, J.

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