IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.38717 of 2024
and
W.M.P.Nos.41917 and 41920 of 2024

Tvl.B.Rama Contractor,
Rep. by its proprietor Tmt.Balakrishnan Rama,
No.3/76A, Ram Nagar,
Virattikuppam Road, Virattikuppam,
Tamil Nadu 605 602. ... Petitioner

Vs.

1. The Commercial Tax Officer / The
State Tax Officer (Int), Inspection - IV,
Cuddalore Division, No.1, Vallalar Nagar,
Manjakuppam, Cuddalore 607 001.

2. The Joint Commissioner,
O/o, The Joint Commissioner (ST) (Int),
Cuddalore Division, No.1,
Vallalar Nagar, Manjakuppam,
Cuddalore 607 001.

3. The Deputy State Tax Officer,
Office of the Deputy Commissioner (ST),
Integrated Commercial Taxes Building,
Villupuram 605 602. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records in the order passed by the 1st respondent in the GSTIN:33ARSPR9455K1ZU/2022-2023 dated 19.08.2024 and the 3rd respondent's consequential Form GST DRC 01D dated 18.11.2024 and quash the same.

For Petitioner : Ms.E.Abinayalakshana

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order in GSTIN:33ARSPR9455K1ZU/2022-2023 dated 19.08.2024, passed by the 1st respondent on the premise that the same was made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a service provider and is registered under the GST Act. During the relevant period of 2022-23, the petitioner has filed the returns and paid appropriate taxes. While so, there was an inspection at the petitioner's place of business on 12.03.2024. During the course of the inspection the following defects were noticed:

(i) Wrong availment of Input Tax Credit in contravention to Section 16 and 17 of the Act.

(ii) Rate of Tax Difference.

(iii) E-way Bill Mismatch / 2022-23.

(iv) Non filing of GSTR 9C / 2022-23.

(v) Belated return filing for 2022-23 - Interest.

3. It is submitted by the learned counsel for the petitioner that a notice in Form DRC01 A was issued to the petitioner on 06.05.2024, followed by another notice in Form DRC 01 dated 29.05.2024. Thereafter, three reminders were issued to the petitioner viz., 01.07.2024, 19.07.2024 and 29.07.2024. Thereafter, 3 reminders viz., 11.05.2024, 25.07.2024 and 10.08.2024 were also sent to the petitioner. However, the petitioner neither filed any reply nor availed the opportunity of personal hearing. Hence, the respondent, passed the impugned order confirming the proposal. It is further submitted by the learned counsel for the petitioner 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 "view additional notices" column in GST Portal, thereby, the petitioner was unaware of the impugned order of assessment. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, he would be able to submit proper supporting documents to explain the alleged

discrepancy.

4. The learned counsel for the petitioner would then place reliance upon the recent judgment of this Court in the case of **Sree Manoj International Vs. Deputy State Tax Officer in W.P.No.10977 of 2024 dated 25.04.2024**, to submit that this court has remanded the matter back in similar circumstances subject to payment of 10% of the disputed taxes.

5. It was further submitted that the petitioner is ready and willing to pay 10% 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 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 19.08.2024 is set aside

b) The petitioner shall deposit 10% 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 10% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 10% 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 10% 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 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 10% 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 10% 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., 10% 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.

18.12.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
spp

To:

1. The Commercial Tax Officer / The
   State Tax Officer (Int),
   Cuddalore Division, No.1, Vallalar Nagar,
   Manjakuppam, Cuddalore 607 001.

2. The Joint Commissioner,
   O/o, The Joint Commissioner (ST) (Int),
   Cuddalore Division, No.1,
   Vallalar Nagar, Manjakuppam,
   Cuddalore 607 001.

3. The Deputy State Tax Officer,
   Office of the Deputy Commissioner (ST),
   Integrated Commercial Taxes Building,
   Villupuram 605 602.

MOHAMMED SHAFFIQ, J.

spp

W.P. No.38717 of 2024
and
W.M.P.Nos.41917 and 41920 of 2024

18.12.2024