IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.38488 of 2024
and
W.M.P. Nos.41690 and 41693 of 2024

K.C. & Sons,
Represented by its Authorised Signatory,
Mr.Kushal Shiyal,
108, Govindappa Naicken Street,
Georege Town, Chennai, Tamil Nadu-600 021. ... Petitioner

Vs.

1.The Deputy Commissioner (ST), GST Appeal,
Chennai, PAPJM Building,
Greams Road, 2nd Floor,
Chennai-06.

2.Deputy State Tax Officer,
Kothawalachavadi Assessment Circle,
No.32, Integrated Commercial 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 on the file having reference No.ZD33123059853F dated 07.12.2023 in GSTIN:33AAFHK9151H1Z8/2017-18 for the FY 2017-18 directing the petitioner to pay interest and penalty till the date of order on the ITC, which was erroneously availed during the Financial Year 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.ZD331024171380X filed on 16.04.2024 on record and afford opportunity to the petitioner.

For Petitioner : Mr.Pranav Jain

For Respondents : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 07.12.2023 on the limited ground that the impugned order suffers from violation of principles of natural justice inasmuch as it does not apply its mind to the material on record while confirming the levy of interest and penalty.

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. On scrutiny of the returns, it was noticed that there was a mismatch between GSTR 3B and 2A.

3. It is submitted by the learned counsel for the petitioner that a notice in DRC-01A was issued on 02.05.2023 and another notice in DRC-01 with personal

hearing notice was issued on 10.05.2023. Further, personal hearing was fixed on 21.06.2023. The petitioner had filed its reply on 09.05.2023, however the impugned order came to be passed on 07.12.2023, confirming the proposal.

4. The learned counsel for the petitioner would submit that the excess availed ITC was reversed in the year 2019, however the impugned order proceeds to levy interest and penalty overlooking the effect that the excess ITC which was availed has already been reversed as early as on 2019. It is further submitted by the learned counsel by the petitioner that portion of the interest which is demanded in the impugned order also stands paid.

5. Taking into account the peculiar facts of the case, wherein, the petitioner has already reversed the ITC which is in dispute, this Court is of the view that the petitioner may be granted one final opportunity to put forth his objections, which was not objected to by the learned Special Government Pleader for the respondent.

6. In view thereof, the impugned order, dated 07.12.2023 is set aside. The impugned order shall be treated as show cause notice and the petitioner shall filed their objections within a period of four weeks from the date of receipt of a

copy of this order. If any such objections are filed within the stipulated period, the respondent shall consider the same and pass appropriate orders in accordance with law after affording the petitioner a reasonable opportunity of hearing. If 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.

7. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

20.12.2024

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

To:

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Chennai-06.

2.Deputy State Tax Officer,
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MOHAMMED SHAFFIQ, J.

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