IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.38721 of 2024
and
W.M.P.Nos.41927 & 41928 of 2024

Tvl. Bhawar Life Style,
Represented by its Proprietor Mr. Sunil Kumar,
No.107/108, First Floor,
Navin WSS Towers,
Harris Road, Langs Garden Road,
Egmore, Chennai-600 002. ...Petitioner

Versus

The State Tax Officer/Commercial Tax Officer,
Group I, Intelligence-I,
Office of the Joint Commissioner (ST),
Chennai Intelligence-I,
No.1, PAPJM Buildings,
Greams Road, Thousand Lights,
Chennai 600 006. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for records of the impugned order passed in GSTIN 33ATTPS9118H1Z3/2022-23 dated 26.06.2024 on the file of the Respondent herein along with the consequential DRC-07 Order under Section 73, Ref No. ZD330624324603N dated 26.06.2024 on the file of the Respondent herein and the quash the same as illegal, arbitrary against the principle of natural justice and against the law.

For Petitioner : Mr.J.Poojesh
for M/s.Eswar, Kumar & Rao Law Firm

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 26.06.2024 passed by the respondent relating to the assessment year 2022-2023.

2. Mr.C.Harsha Raj, learned Additional Government Pleader takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. The petitioner is running a retail business of telephone sets and other wireless networks products covered under HSN Code 85171290, 85044090, 64021910 and 43031020. The petitioner has PAN India business and outlets in various states viz., Karnataka, Andhara Pradesh, Kerala, Puducherry and

Telangana. The petitioner is registered under the Goods and Service Tax Act, 2017. The petitioner has filed its returns and paid appropriate taxes for the relevant period. While so, there was an inspection of the business place of the petitioner under Section 67 of the TNGST Act. During the course of such inspection and on verification of tax returns, statements, and records, the following defects were noticed:-

(i) Excess availment of ITC

(ii) Trade receivable/Expiry Goods/Free Samples

(iii) Blocked Credit Availed

(iv) Stock Audit Shortage

(v) Expenses

(vi) Claim received and other income

(vii) Sundry Creditors

(viii) Sundry Debtors

(ix) Scheme and Discount paid

(x) E-way bill inward

(xi) E-way bill outward supplies

(xii) Part A only Generated

(xiii) E-way bill cancellation

(xiv) Non-supplies

(xv) Purchase from unregistered person

(xvi) Interest due for belated reporting of outward supply

(xvii) Electricity charges

(xviii) Asset addition

(xix) GSTR 3B due more than GSTR 1

3.1 Subsequently, a notice in Form DRC-01A dated 13.12.2023 and a show cause notice in Form DRC-01 dated 10.04.2024 were issued to the petitioner through GST portal, followed by three reminder notices dated 15.05.2024, 23.05.2024 & 27.05.2024 along with an opportunity of personal hearing. However, the petitioner had neither filed its reply nor availed an opportunity of personal hearing. Hence, impugned order came to be passed by the respondent, confirming the proposals.

4. The impugned order is challenged on the premise that the notices and orders were uploaded under the "view additional notices and orders" tab on the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and thus unable to participate in the adjudication proceedings.

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***. It was further submitted that the petitioner is ready and willing to pay 25% 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 Additional Government Pleader appearing for the respondent does not have any serious objection.

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

a) The impugned order dated 26.06.2024 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 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 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 eight (8) 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 and eight 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/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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To
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Group I, Intelligence-I,
Office of the Joint Commissioner (ST),
Chennai Intelligence-I,
No.1, PAPJM Buildings, Greams Road, Thousand Lights, Chennai 600 006.

MOHAMMED SHAFFIQ, J.
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