IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.38891 of 2024
and
W.M.P.Nos.42123 and 42124 of 2024

Tvl.Sri Vinayaga Electricals
Represented by its Proprietor,
Mr.Vinayagamorthy. ..Petitioner

Vs.

The Assistant Commissioner (ST),
Krishangiri-II, Circle ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the records on the files of the respondent herein in Form GST DRC -07 with Reference No.ZD330224087485B dated 15.02.2024 along with detailed proceeding in GSTIN :33ATKPVO735A2ZX dated 15.02.2024 for the tax period 2018-19 and quash the same and pass orders.

For Petitioner : Mr.N.Chandirasekar

For Respondent : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 15.02.2024 relating to the assessment year 2018-19.

2. The petitioner is engaged in the business of trading of electrical as retailer and wholesaler and is a registered dealer under Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. On scrutiny of the monthly returns, it was found that excess input tax credit availed on inward RCM supplies in GSTR 3B.

2.1. Pursuant thereto, a notice in ASMT-10 was issued to the petitioner on 26.07.2023, followed by a notice in DRC 01A on 17.12.2023. A show cause notice in DRC 01 was issued to the petitioner on 11.01.2024. Further, personal hearing was offered. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing on 12.02.2024. Hence, the impugned order came to be passed, confirming the proposal.

3. 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 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 respondent does not have any serious objection.

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

a) The impugned order dated 15.02.2024 is set aside

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and 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 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 authority 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.

5. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

19.12.2024

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

To
The Assistant Commissioner (ST),
Krishangiri-II, Circle

MOHAMMED SHAFFIQ, J.

mrn

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