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.38899 of 2024
and
W.M.P.Nos.42129 and 42130 of 2024

Tvl.Sri Rajeswari Timber Mart
Rep. by its Partner Krishna Kumar,
252/2, Palakkad Main Road,
B.K.Pudur, Coimbatore 641 008. ... Petitioner

Vs.

State Tax Office (FAC),
Office of the Commercial Tax Officer,
Kuniyamuthur Circle, Coimbatore - I,
Coimbatore. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records on the files of respondent in impugned order in GST:33ABLFS8365E1ZW/2019-20 dated 17.08.2024 along with consequential order vide form GST DRC-07 with Ref.No.ZD330824140640N dated 17.08.2024 for the tax period April, 2019 to March 2020 and quash the same.

For Petitioner : Mr.K.Vignesh Kumar

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order in GST:33ABLFS8365E1ZW/2019-20 dated 17.08.2024, passed by the 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 engaged in the business of trading in Timbers, Plywood's and Doors and is registered under the GST Act. During the relevant period of 2019-20, the petitioner has filed the returns and paid appropriate taxes. However, on verification of returns, it was found that there was a discrepancy viz., difference between GSTR 2A/2B and GSTR 3B.

3. It is submitted by the learned counsel for the petitioner that a intimation in GST ASMT 10 was issued on 08.08.2023, to which the petitioner responded vide reply dated 04.09.2023. Subsequently, a show cause notice in Form DRC01 was issued on 05.02.2024. In response to the show cause notice, the petitioner filed a reply vide letter dated 05.03.2024. Thereafter, 3 reminders viz., 11.05.2024, 25.07.2024 and

10.08.2024 was also sent to the petitioner. However, it was found that the tax payer reply dated 05.03.2024 was not supported by relevant documents in support of the explanation of the discrepancy, thus the impugned order was passed confirming in the proposal. 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 supporting documents and explain the alleged discrepancy.

4. The learned counsel for the petitioner would 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 17.08.2024 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

State Tax Office (FAC),
Office of the Commercial Tax Officer,
Kuniyamuthur Circle, Coimbatore - I,
Coimbatore.

MOHAMMED SHAFFIQ, J.

spp

W.P. No.38899 of 2024
and
W.M.P.Nos.42129 and 42130 of 2024

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