**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED :21.12.2024**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P. No.39159 of 2024**
**and**
**W.M.P.Nos.42411 and 42412 of 2024**

Tvl.Kumar Traders,
GSTIN:33AWWPS8759A1ZV,
Represented by its Proprietor Arulkumar,
831, Mohanraj Nagar, Idikarai Road,
Coimbatore 641 020. ... Petitioner

Vs.

The State Tax Officer,
Periyanaickenpalayam Circle,
Commercial Tax Building,
Dr Balasundaram Road,
Coimbatore 641 018. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, call for the records pertaining to impugned order in Form GST DRC-07 bearing reference number ZD330624162318E/ 2020-21 dated 19.06.2024 issued by the respondent.

For Petitioner : Mr.G.Derrick Sam

For Respondent : Mr.V.Prashanth Kiran,
Government Advocate.

**ORDER**

The present writ petition is filed challenging the impugned order passed by the respondent dated 19.06.2024 relating to the assessment year 2020-21.

2. The petitioner is engaged in the business of manufacturing scrap and is a registered dealer under the Goods and Services Tax Act, 2017. During the relevant period of 2020-21, the petitioner filed its returns and paid the appropriate taxes. However, on verification of the petitioner's return, it was *inter alia* noticed that there was excess claim of Input Tax Credit.

2.1. Pursuant thereto, a notice in DRC-01A was issued on 23.02.2024, followed by notice in DRC-01 on 01.03.2024 and reminders with personal hearing on 15.03.2024, 30.05.2024 and 05.06.2024. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. Hence, the impugned order came to be passed, confirming the proposal.

3. The impugned order is challenged on the premise 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 the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication

proceedings.

4. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies. The learned counsel for the petitioner would then 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,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that they 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.

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

a) The impugned order dated 19.06.2024 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 with 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 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.

6. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

**21.12.2024**

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

**MOHAMMED SHAFFIQ, J.**

shk

To:

The State Tax Officer,
Periyanaickenpalayam Circle,
Commercial Tax Building,
Dr Balasundaram Road,
Coimbatore 641 018.

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