IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WP No.39043 of 2024
and
W.M.P.No.42284 of 2024

M/s.PIAB Vacuum Technology Private Limited,
Having its registered office at
No. Commercial Building A1(1),
Thorve Capital Phase 1, Balewadi,
Pune 411 045.
Represented by Mr.Uday Shrira Kshirsagar, Director.

... Petitioner

V.

1. Commissioner of State Tax,
   4th Floor, Ezhilagam building,
   Kamarajar Road, Chepauk,
   Chennai 600 005.

2. Union of India,
   Through, The Secretary,
   Ministry of Finance,
   (Department of Revenue) No.137,
   North Bock, New Delhi 110 001.

3. Central Board of Indirect Taxes and Customs,
   Department of Revenue,
   Ministry of Finance, North Block,

New Delhi 110 001.

4. Deputy Commissioner (ST),
   Integrated CT Building, No.4/109,
   Chennai Bangalore, Highways,
   Varadharajapuram, Nazarathpet,
   Poonamallee 600 123.

5. Assistant Commissioner of State Tax,
   Integrated CT Building, No.4/109,
   Chennai Bangalore, Highways,
   Varadharajapuram, Nazarathpet,
   Poonamallee 600 123.

6. Commercial Tax Officer,
   Integrated CT Building, No.4/109,
   Chennai Bangalore, Highways,
   Varadharajapuram, Nazarathpet,
   Poonamallee 600 123. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorarified Mandamus, calling for the records on the file of the 6th respondent in the impugned proceedings against Form GST DRC-07 bearing reference no.ZD330424201168T dated 25.04.2024 consequential order passed by 5th respondent dated 24.04.2024 along with the urgent notice for recovery of arrears issued by 4th respondent dated 14.08.2024 under the provision of CGST Act, 2017 and quash the same and consequently direct the respondents to pass DE NOVO order.

For the Petitioner	:Mr.Avinash Poddar
For the R1, R4 to R6	:Mr.C.Harsha Raj Additional Government Pleader

ORDER

The present writ petition has been filed challenging the impugned order passed by the respondent in reference no.ZD330424201168T dated 25.04.2024 consequential order passed by 5th respondent dated 24.04.2024 along with the urgent notice for recovery of arrears issued by 4th respondent dated 14.08.2024, on the premise that the same is 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 various business segments, including Battery, Additive Manufacturing, Automotive, Electronics etc., and is registered under the GST Act. During the relevant period of 2018-19, the petitioner has filed the returns and paid appropriate taxes. However, on verification of the returns the following discrepancies were noticed:

i. Tax on outward supplies under declared on reconciliation of data in GSTR-09

ii. Amount of supplies in GSTR-01 in excess of supplies declared in GSTR-09.

iii. Ineligible Input Tax Credit.

3. It is submitted by the learned counsel for the petitioner that an intimation in Form DRC01 was issued on 30.12.2023, followed by a reminder on 10.04.2024. In response, the petitioner filed its reply dated 12.02.2024. However, the impugned order came to be passed without considering the petitioner's reply dated 12.02.2024. It is also submitted by the learned counsel for the petitioner that pursuant to the impugned order a notice for recovery of arrears was issued to the petitioner on 14.08.2024 and the petitioner's bank account was attached. It is further submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, he would be able to explain the alleged discrepancies.

4. 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,*** to submit that this court has

remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes. The learned counsel for the petitioner would submit that the entire taxes have been paid and they may be granted an 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.

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

a) The impugned orders are 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 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.

20.12.2024

Index : Yes/No
Neutral Citation : Yes/No
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To

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<u>MOHAMMED SHAFFIQ, J.</u>

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