IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.39114 of 2024
and
W.M.P.Nos.42360 and 42362 of 2024

Tvl.Navalpakkam Venkatapathy Naidu Baabu,
Partner of M/s.Victory Traders,
54, Piliayar Kovil Street,
Navalpakkam, Cheyyar Taluk,
Tiruvannamalai 604 503. ... Petitioner

Vs.

The Deputy State Tax Officer -2,
Vandavasi Assessment Circle,
Vandavasi. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in GSTIN:33AEHPB8946B1ZT dated 29.04.2024 and the connected order under Section 73 dated 29.04.2024 and the summary of the order in Form GST DRC-07 dated 29.04.2024 issued in Reference No:ZD330424238743G and quash the same as passed contrary to the provisions of the Central Goods and Service Tax Act, 2017 read with the provisions of the Tamil Nadu Goods and Service Tax Act, 2017 and also passed in contrary to the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

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

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 29.04.2024 relating to the assessment year 2018-19.

2. The petitioner is a works contractor and is registered under the Goods and Services Tax Act, 2017. During the relevant period viz., 2018-19, the petitioner filed its returns and paid the appropriate taxes. However, during the scrutiny of the petitioner's return, the following discrepancies were noticed viz.,

i. Excess Claim of Input Tax Credit

ii.Mismatch between GSTR-3B and GSTR-2A

iii.Mismatch between GSTR-7 and GSTR-1

2.1. Pursuant thereto, a notice in ASMT-10 was issued on 21.12.2021, followed by notices in DRC-01A on 22.08.2023 and DRC-01 on 28.12.2023. Reminders along with personal hearing were issued on 28.03.2024, 17.04.2024 and 23.04.2024. 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 29.04.2024 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.

20.12.2024

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

To:

The Deputy State Tax Officer -2,
Vandavasi Assessment Circle,
Vandavasi.

MOHAMMED SHAFFIQ, J.

shk

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(1/2)