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W.P.No.39175 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.39175 of 2024

and

W.M.P.Nos.42428 and 42429 of 2024

Mr.Koilraj Abraham Davamoni
Proprietor of
M/s.Geoff Poly Technologies
7/5, MGR Nedunchalai,
Nagalkeni, Chrompet,
Chennai 600 044.

... Petitioner

Vs.

The State Tax Officer
Pallavaram Assessment Circle,
Room No.345, 3rd Floor, South Tower,
Commercial Taxes and Registration Department,
Nandanam, Chennai 600 035.

... 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:33ADZPA5706D1ZQ/2017-18 dated 31.12.2023, the order dated 31.12.2023 passed under Section 73 and the summary of the order in Form GST DRC-07 dated 31.12.2023 both in Reference No:ZD331223298100V and quash the impugned orders as barred by limitation and so passed contrary to the provisions of the CGST Act, 2017 and TNGST Act, 2017 and also against the principles of natural justice.



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W.P.No.39175 of 2023

For Petitioner

: Mr.P.Rajkumar

For Respondent

: Mr.C.Harsha Raj,
Additional Government Pleader.

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 31.12.2023 relating to the assessment year 2017-18.

2. The petitioner is a dealer in auto parts and accessories and is registered under the Goods and Services Tax Act, 2017. During the relevant period of 2017-18, the petitioner filed its returns and paid the appropriate taxes. However, during the scrutiny of the petitioner's monthly return, it was noticed that there was an Input Mismatch between GSTR-3B and GSTR-2A/2B.

2.1. Pursuant thereto, a Show Cause Notice in DRC-01 was issued on 20.09.2023. Personal hearing was offered indicating that the petitioner may appear in person on any working day within 30 days from the date of receipt of the notice. 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 is submitted by the learned counsel for the petitioner that the petitioner had filed an appeal dated 21.06.2024 before the Appellate Authority along with 10% pre-deposit, which has been rejected on the ground of being barred by limitation and his only request is that the same may be adjusted towards 25% of the disputed tax, to which, the learned Additional Government Pleader appearing for the respondent does not have any serious objection.



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

- a) The impugned order dated 31.12.2023 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.



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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.



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

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Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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To:

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The State Tax Officer
Pallavaram Assessment Circle,
Room No.345, 3rd Floor, South Tower,
Commercial Taxes and Registration Department,
Nandanam, Chennai 600 035.



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MOHAMMED SHAFFIQ, J.

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