IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.39473 of 2024
and
W.M.P.Nos.42722 and 42724 of 2024

Tvl.J.S.Enterprises,
Represented by its Proprietor, Mr.Sankar Prakash,
No.327, Bajanai Kovil Street,
Sembarambakkam,
Chennai, Tamil Nadu 600 123. .. Petitioner

Vs.

The Deputy State Tax Officer-I,
Sriperumbudur Assessment Circle,
Station No.4/109, Chennai – Bangalore Highway,
Vardharapuram 600 123. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of respondent's order passed u/s.74 of TNGST Act, 2017 in Reference No.ZD330324082114T dated 14.03.2024 along with Form GST DRC-07 dated 14.03.2024 relating to financial year 2019-20 and quash the same.

For Petitioner : MsN.Janani

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent in Reference No.ZD330324082114T dated 14.03.2024 along with Form GST DRC-07 dated 14.03.2024 for the period 2019-20, 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 the business of selling gloves and is registered under the GST Act. There was an inspection at the petitioner place of business under Section 67 of the GST Act. During the course of inspection it was found that the petitioner for the financial year 2019-20 had availed Input Tax Credit fraudulently on the basis of bogus invoices.

3. It is submitted by the learned Counsel for the petitioner that an intimation in notice DRC 01A was issued on 13.03.2023 followed by a notice in DRC01 on 04.01.2024. 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 under "view

additional notices and orders" column of the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. 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 they may be granted an 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 14.03.2024 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 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.

21.12.2024

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

To:

The Deputy State Tax Officer-I,
Sriperumbudur Assessment Circle,
Station No.4/109, Chennai – Bangalore Highway,
Vardharapuram 600 123.

MOHAMMED SHAFFIQ, J.

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