IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.39372 of 2024
and
W.M.P.Nos.42648 and 42650 of 2024

Tvl.S.Gopi Works Contract, Contractor,
(GSTIN:33CHDPG4039H1ZO)
Represented by its proprietor Tvl.Subramani Gopi,
No.160, Pillaiyar Koil Street,
Narasingarayanpettai, Gingee Taluk,
Villupuram District, Tamil Nadu 604 202.

..Petitioner

Vs.

1. The Commercial Tax Officer / The State Tax Officer,
(Intelligence), Inspection-V,
Cuddalore Division, No.1, Vallalar Nagar,
Manajakuppam, Cuddalore 607 001.

2. The Joint Commissioner,
O/o.The Joint Commissioner (ST) (Intelligence),
Cuddalore Division, No.1, Vallalar Nagar,
Manjakuppam, Cuddalore 607 001.

3. The Deputy State Tax Officer (Recovery),
Office of the Deputy Commissioner (ST),
Integrated Commercial Taxes Building,
Integrated Master Plan Complex,
Villupuram 605 602.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in the order passed by the 1st respondent in the 33CHDPG4039H1ZO/2022-2023 dated 26.08.2024 and the 3rd respondent's Recovery Intimation Notice vide Reference No.GSTIN:33CHDPG4039H1ZO/2020-2021 to 2023-2024 dated 06.12.2024 and to quash the same.

For Petitioner : Mr.S.P.Nagaraj

For Respondents : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned order in GST: 33CHDPG4039H1ZO/2022-2023 dated 26.08.2024, passed by the 1st respondent and the consequential recovery proceedings dated 06.12.2024.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in execution of Composite Works Contract to various Government Agencies and is registered under the GST Act. While so, there was an inspection at the petitioner's place of business pursuant to an authorisation by Joint Commissioner (ST)(Intelligence).

During the course of the inspection the following defects were noticed:

(i) ITC mismatch between GSTR 3B and GSTR 1.

(ii) Tax payable on non-reversal of ITC for credit note/2022-23.

(iii) Incorrect rate of tax / 2022-23.

3. It is submitted by the learned counsel for the petitioner that a intimation in Form DRC 01A was issued on 11.01.2024, to which the petitioner responded vide reply dated 13.02.2024, sought extension of time. Subsequently, a show cause notice in Form DRC01 was issued on 26.02.2024. Thereafter, 3 reminders with personal hearing viz., 13.03.2024, 02.04.2024 and 25.04.2024 was also sent to the petitioner. However, the petitioner neither replied nor availed the opportunity of personal hearing, thus the impugned order was passed confirming the proposal. Pursuant to the passing of impugned order, recovery proceeding was also initiated. It is submitted by the learned counsel for the petitioner 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 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 submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, he would be able to submit supporting documents and explain the alleged discrepancy.

4. The learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of **Sree Manoj International Vs. Deputy State Tax Officer in W.P.No.10977 of 2024 dated 25.04.2024**, to submit that this court has remanded the matter back in similar circumstances subject to payment of 10% of the disputed taxes.

5. It was further submitted that the petitioner is ready and willing to pay 10% of the disputed tax and that he may be granted one final 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.

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

a) The impugned order dated 26.08.2024 is set aside

b) The petitioner shall deposit 10% 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 10% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 10% 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 10% 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 10% 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 10% 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., 10% 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.

7. 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:

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MOHAMMED SHAFFIQ, J.

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