IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.39479 of 2024
and
W.M.P.Nos.42741 and 42742 of 2024

M/s.Maipper Precision Plastics,
Rep. by its partner,
Mr.Santhanam Ramesh,
32/1 5th Main Road Sidco Industrial Estate,
Thirumudivakkam, Chennai 600 044. .. Petitioner

Vs.

1. The Deputy State Tax Officer,
   23WG+H5R, Nazarathpettai,
   Tamil Nadu 600 123.

2. The Assistant Commissioner (ST)
   Thirumudivakkam Assessment Circle,
   Integrated Commercial Taxes Department Building,
   3rd Floor, Room No.344,
   Nandanam, Chennai 600 035.

3. The Deputy Commissioner (ST),
   Chengalpattu Zone, No.26, Abirami Complex,
   Mahalakshmi Nagar, Thimmavaram,
   Chengalpattu 603 101. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the order bearing nos.(1) ZD330723074465A dated 19.07.2023, (2) ZD3312230305297 dated 06.12.2023 (3) ZD3307243140500 dated 26.07.2024 passed by the 2nd respondent and (4) Bank Attachment letter bearing nos. DSTO-1 dated 12.11.2024 and 25.11.2024 passed by the 3rd respondent and quash the same consequently direct the 1" respondent herein to re-do the assessment afresh after providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.K.Suresh Kumar

For Respondent : Mr.C.Harsha Raj
Special Government Pleader

ORDER

The present writ petition is filed challenging the impugned notice in DRC 01A dated 19.07.2023 and the order dated 06.12.2023 for the assessment year 2017-18. The writ petition also challenges the order of assessment dated 26.07.2024 for the assessment year 2019-20 and the bank attachment dated 12.11.2024 and 25.11.2024.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a supplier of precision plastic, metal components and assemblies for global car manufacturers and is registered under the GST Act. During the relevant period of 2017-18 and 2019-20, the petitioner

had filed the returns and paid appropriate taxes. However, on verification of the monthly returns for the period 2017-18, it was noticed that there was a mismatch between GSTR 3B and GSTR 2A, while for the assessment year 2019-20, it was noticed that there was excess claim of Input Tax Credit inasmuch as there was under declaration of ineligible Input Tax Credit and a portion of the Input Tax Credit was also hit by the limitation prescribed under Section 16(4) of the Act.

3. It is also submitted by the learned counsel for the petitioner that for the assessment year 2017-18, the petitioner was issued a notice in Form DRC 01A on 19.07.2023, this was followed by a DRC 01 on 29.09.2023. The petitioner was also granted opportunity of personal hearing. As the petitioner did not appear for personal hearing the impugned order came to be passed in DRC 07 dated 06.12.2023. For the assessment year 2019-20, an intimation in Form DRC01 was issued on 21.05.2024 followed by reminders viz.,01.07.2024, 10.07.2024, 19.07.2024 and personal hearing viz., 07.07.2024, 15.07.2024, 25.07.2024. However, the petitioner had not responded to any of the above notices / intimation and the impugned order came to be passed. It

is submitted by the learned counsel for the petitioner that for both the assessment years, 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 "View Additional Notices and Order" 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 also submitted that pursuant to the impugned order of assessment recovery proceedings were initiated and bank account is 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. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax

demanded for the period 2017-18.

5. While the period 2019-20 is concerned the petitioner would submit that they are ready and willing to pay 25% of the disputed taxes with respect to the discrepancy relating to Under declaration of Ineligible Input Tax Credit and that the petitioner 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 respondents does not have any serious objection. Further, in respect of the other discrepancy pointed out in the impugned order viz., Input Tax Credit claimed beyond the period stipulated under Section 16(4) of the GST Act, it is submitted by the learned counsel for the petitioner that an amendment has been brought into the GST Acts and that Section 16(5) has now been inserted vide Section 118 of the Finance (No. 2) Act, 2024. The relevant provision reads as under:

> *"118. In section 16 of the Central Goods and Services Tax Act, with effect from the 1st day of July, 2017, after sub-section (4), the following sub-sections shall be inserted, namely:—*

"(5) Notwithstanding anything contained in sub-section (4), in respect of an invoice or debit note for supply of goods or services or both pertaining to the Financial Years 2017-18, 2018-19, 2019-20 and 2020-21, the registered person shall be entitled to take input tax credit in any return under section 39 which is filed up to the thirtieth day of November, 2021."

(6) Where registration of a registered person is cancelled under section 29 and subsequently the cancellation of registration is revoked by any order, either under section 30 or pursuant to any order made by the Appellate Authority or the Appellate Tribunal or court and where availment of input tax credit in respect of an invoice or debit note was not restricted under sub-section (4) on the date of order of cancellation of registration, the said person shall be entitled to take the input tax credit in respect of such invoice or debit note for supply of goods or services or both, in a return under section 39,—

(i) filed up to thirtieth day of November following the financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier; or

(ii) for the period from the date of cancellation of registration or the effective date of cancellation of registration,

as the case may be, till the date of order of revocation of cancellation of registration, where such return is filed within thirty days from the date of order of revocation of cancellation of registration, whichever is later."

6. It is thus submitted by the learned counsel for the petitioner that in view of the above amendment, the reason cited by the adjudicating authority with respect to the discrepancy pointed out in the impugned order viz., Input Tax Credit claimed beyond the period stipulated under Section 16(4) of the GST Act, may no longer survive and the respondent would have to re-do the assessment in accordance with the above amendment. The learned Additional Government Pleader appearing for the respondent did not have any serious objections to the same.

7. By consent of both parties, the writ petition insofar as the order of assessment for the period 2017-18, 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.

8. By consent of both parties, the writ petition insofar as the order of assessment for the period 2019-20 stands disposed of on the following

terms:

a) The impugned order dated 26.07.2024 is set aside.

b) The petitioner shall deposit 25% of the disputed taxes in respect of issues other than demand of tax arising as a result of denial of Input Tax Credit by invoking Section 16(4) of GST Act, 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 other than demand of tax arising as a result of denial of Input Tax Credit by invoking Section 16(4) of GST Act. The assessing authority shall then intimate the balance amount out of 25 % of disputed taxes other than demand of tax arising as a result of denial of Input Tax Credit by invoking Section 16(4) of GST Act 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, other than demand of tax arising as a result of denial of Input Tax Credit by invoking Section 16(4) of GST Act, 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 other than demand of tax arising as a result of denial of Input Tax Credit by invoking Section 16(4) of GST Act, 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 other than demand of tax arising as a result of denial of Input Tax Credit by invoking Section 16(4) of GST Act.

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 other than demand of tax arising as a result of denial of Input Tax Credit by invoking Section 16(4) of GST Act 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.

9. 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:

1. The Deputy State Tax Officer,
   23WG+H5R, Nazarathpettai,
   Tamil Nadu 600 123.

2. The Assistant Commissioner (ST)
   Thirumudivakkam Assessment Circle,
   Integrated Commercial Taxes Department Building,
   3rd Floor, Room No.344,
   Nandanam, Chennai 600 035.

3. The Deputy Commissioner (ST),
   Chengalpattu Zone, No.26, Abirami Complex,
   Mahalakshmi Nagar, Thimmavaram,
   Chengalpattu 603 101.

MOHAMMED SHAFFIQ, J.

spp

W.P. No.39479 of 2024
and
W.M.P.Nos.42741 and 42742 of 2024

21.12.2024