BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.08.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.19053 of 2024
and
W.M.P.(MD)Nos.16123 and 16126 of 2024

Tvl.Ohm Namasivaya Papers and Boards,
Represented by its Managing Partner,
S.Senthilkumar ... Petitioner

Vs.

The State Tax Officer,
Madurai Rural West,
Madurai. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the respondent in Order No.220709200141770 dated 23.08.2021 and quash the same and consequently direct the respondents to return the Input Tax Credit of Rs.4,91,553/- available in the petitioner's TIN No. 33065044495 within the time fixed by this Court.

For Petitioner : Mr.K.K.Udayakumar
For Mr.H.Arumugam

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

This Writ Petition is filed seeking to quash the order of the respondent in Order No.220709200141770 dated 23.08.2021 and consequently direct the respondents to refund the Input Tax Credit of Rs.4,91,553/- available in the petitioner's TIN No.33065044495.

2. It is submitted by the learned counsel for the petitioner that the petitioner who was carrying on business during the VAT regime though intended to continue even after the introduction of GST had also obtained registration under GST Act. However, did not continue his business after the introduction of GST.

3. It is submitted that the registration obtained by the petitioner was cancelled vide order dated 15.10.2019. The petitioner having decided not to carrying on business had sold the property to Geetha through two registered sale deeds dated 03.08.2022 and shifted his residence. It is stated that the petitioner is presently residing at Thuraiyur, Trichy and employed in a private textile shop.

4. While so, it is submitted that the petitioner received a call from the office of the respondent stating that the petitioner had erroneously entered the Input Tax Credit and there is a mismatch and notices have been issued to the petitioner to which the petitioner had not responded. The petitioner visited the office of the respondent and explained the alleged mismatch and a statement was also recorded by the respondent, who apparently informed the petitioner that the mismatch would be rectified.

5. On 01.06.2024, the petitioner was informed by the husband of the purchaser of the property that they have been served with a notice of attachment of the property sold to them by the petitioner. Thereafter, the petitioner approached the consultant who informed that the order dated 28.03.2021 has been passed, which is the subject matter of the present Writ Petition. The petitioner had vacated the address wherein he had originally carried on business and he was never served with any notice and the allegations that the petitioner had erroneously availed the Input Tax Credit is erroneous, inasmuch as the petitioner had not carried on business under the GST regime.

7. At this juncture, 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***.

8. The learned counsel for the petitioner would further submit that the petitioner had stopped carrying business under the GST regime and he had no occasion to verify the web portal. It was further submitted that the petitioner is ready and willing to pay 25% 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.

9. In view thereof, the impugned order dated 23.08.2021 is set aside and the petitioner shall deposit 25% of the disputed tax within a period of two (2) weeks from the date of receipt of a copy of this order. 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 along with supporting documents/material, within a period of four (4) weeks from the date of receipt of a copy of this order. 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. If the above deposit is not paid or the objections are not filed within the stipulated period, i.e., two weeks and four weeks from the date of receipt of a copy of this order respectively, the impugned order of assessment shall stand revived.

10. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

12.08.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

<u>To:</u>

The State Tax Officer,
Madurai Rural West,
Madurai.

MOHAMMED SHAFFIQ, J.

Nsr

W.P.(MD)No.19053 of 2024

12.08.2024