BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2024

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.19064 of 2024
and
W.M.P.(MD).No.16144 of 2024

Tvl.Mathina Traders,
Represented by its Proprietor,
Mohamed Elias. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o. the Principal and Special Commissioner of
Commercial Taxes, Ezhilagam,
Chepauk,
Chennai - 600 005.

2.The Deputy Commercial Tax officer,
Dindigul Town Assessment Circle,
Commercial Taxes Office,
Deputy Collector Office Road,
Dindigul - 624 201. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the second respondent in Order Reference No.ZD330823023762J dated 04.08.2023 and quash the same.

For Petitioner	:	Mr.B.Rooban
For Respondents	:	Mr.J.K.Jayaselan Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order issued by the respondent in Form GST DRC – 07 dated 04.08.2023 on the ground of violation of principles of natural justice.

2. The impugned order has been passed on the premise that the petitioner had availed excess Input Tax Credit. It was submitted by the learned counsel for the petitioner that the petitioner purchased goods from the registered supplier after paying appropriate taxes and the said supplier had also promptly reported the sales in their returns in GSTR-1 and GSTR-3B and the entire transactions are duly reflected in GSTR-2A. It was further submitted that the said dealer was a registered dealer on the file of the respondent till 31.01.2021 and their registration was cancelled *suo motu* with effect from 01.02.2021. However, the petitioner purchased the goods from the said dealer well before the cancellation of their registration, i.e., when they were an active/existing supplier. All the purchases were covered by e-way bills as mandated under the Act and the same was duly reported by the petitioner to the respondent through returns. It was thus submitted that the petitioner is entitled to the claim of Input Tax Credit.

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 and it had been uploaded only in the GST portal under “Additional notices and orders”. It was submitted by the learned counsel for the petitioner that due to closure of business, the petitioner had not accessed the GSTIN portal and was thus unable to participate in the adjudication proceedings.

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***.

5. It was submitted by the learned counsel for the petitioner that with the introduction of GST, there were several technical glitches in the portal and the assessees were also taking time to adapt to the e-mechanism and it was only in view of the same that the petitioner was unable to respond to the above notices and the order of adjudication. It was submitted by the learned counsel for the petitioner 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 Government Advocate appearing for the respondent does not have any serious objection.

6. In view thereof, the impugned order is set aside. 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.

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

07.08.2024

Index : Yes / No
Internet : Yes/ No
Lm

To

1. The Commissioner of Commercial Taxes,
   O/o. the Principal and Special Commissioner of
   Commercial Taxes, Ezhilagam,
   Chepauk,
   Chennai - 600 005.

2. The Deputy Commercial Tax officer,
   Dindigul Town Assessment Circle,
   Commercial Taxes Office,
   Deputy Collector Office Road,
   Dindigul - 624 201.

MOHAMMED SHAFFIQ, J.

Lm

W.P.(MD).No.19064 of 2024

07.08.2024