BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.19365 of 2024
and
W.M.P(MD)No.16417 of 2024

Tvl. Andavar Agencies,
Represented by Proprietor,
S.Rajagopal. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Sivakasi-1 Assessment Circle,
Commercial Taxes Building,
N.G.O Colony, Satchiyapuram,
Sivakasi-626 124. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the impugned assessment order on the file of respondent vide GSTIN: 33ACZPRS5114K1Z2/2022-23, dated 20.10.2023 and quash the same as illegal and devoid of merits and direct the respondent to redo the assessment proceedings for the year 2022-23.

For Petitioner : Mr.Raja. Karthikeyan

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

ORDER

The present writ petition has been filed challenging the impugned order of assessment, dated 20.10.2023, whereby, the petitioner's claim for Input Tax Credit was rejected on the premise that, the supplier has not remitted the taxes to the Government after collecting the same from the petitioner, thereby, rendering the petitioner ineligible to avail Input Tax Credit in terms of Section 16(2)(c) of the GST Act.

2. The respondent has issued a notice alleging that the petitioner had availed excess ITC and directing the same be paid along with interest under Section 50(3) of the TNGST Act, 2017 and CGST Act, 2017. A detailed reply was filed by the petitioner, wherein, it was submitted that the difference between GSTR-2A and GSTR-3B is only in view of the fact that, excess taxes were paid by the petitioner for the months of July and August 2022, which was sought to be adjusted in the subsequent months. However, the same was rejected by the adjudicating authority and the impugned order has been passed.

3. It is submitted by the learned counsel for the petitioner that the impugned order of assessment was uploaded in the web portal and the petitioner had difficulty in accessing the portal. 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,*** wherein, this Court was pleased to permit the petitioner to file statutory appeal, though the limitation period prescribed for filing an appeal in terms of Section 107, had expired prior to filing of the Writ Petition, subject to the condition that the petitioner depositing 25% of the disputed tax amount. It was thus submitted that the petitioner may be permitted to file an appeal and he is ready and willing to make deposit 25% of the tax that are due, as a condition for entertaining the appeal. The same is also not seriously objected to by the learned Additional Government Pleader for the respondent.

4. Taking into account the above submissions, this Court is inclined to permit the petitioner to file statutory appeal together with the deposit of 25% of the tax that are due, within a period of three (3) weeks from the date of receipt of a copy of this order. If any such appeal is filed along with the above deposit, the same shall be entertained without reference to the period of limitation and orders shall be passed in accordance with law after affording reasonable opportunity of hearing to the petitioner.

5. Accordingly, the writ petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

13.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The Assistant Commissioner (ST),
Sivakasi-1 Assessment Circle,
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MOHAMMED SHAFFIQ, J.

BTR

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