BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.19502 of 2024
and
W.M.P(MD)No.16560 of 2024

Pandiarajan Vivek ... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Madurai Rural (East),
514, Dr.Thangaraj Road,
Tallakulam,
Madurai-625 020.

2.The Deputy Commissioner GST (Appeals),
514, Dr.Thangaraj Road, Tallakulam,
Madurai-625 020. ... 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 in Reference No.ZD331223252186P/2017-2018, dated 28.12.2023 issued by the first respondent and quash the same as illegal and in violation of the principles of natural justice and pass such further or other orders as this Court.

For Petitioner : Mr.S.Karthik

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

ORDER

The present Writ Petition is filed challenging the impugned order issued by the first respondent in Reference No.ZD331223252186P/2017-2018, dated 28.12.2023 for the assessment year 2017 - 2018.

2. The impugned order is challenged on the premise that the notice, dated 29.09.2023 in GST DRC-01 was issued invoking Section 73 of the Tamil Nadu Goods and Service Tax Act, 2017. However, the impugned order of adjudication has been made under Section 74 of the TNGST Act. It was submitted that the ingredients for invoking Section 74 are different from that of Section 73. Therefore, the departure from the show cause notice without putting the petitioner on notice results in violation of principles of natural justice and thus liable to be set aside.

3. To the contrary, it was submitted by the learned Additional Government Pleader for the respondent that the petitioner herein has not filed any objection and further he has also preferred an appeal beyond the statutory period of limitation and it was rejected.

4. Considering the submissions of both sides, I do not find that there is merit in the submission of the learned Counsel for the petitioner, inasmuch as finding of wilful misstatement or suppression of facts to evade tax, is a condition precedent for invoking Section 74 and the same may require examination by the adjudicating authority.

5. 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.***

6. 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 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.

7. In view thereof, 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.

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

14.08.2024

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

To

1.The Assistant Commissioner (ST),
Madurai Rural (East),
514, Dr.Thangaraj Road,
Tallakulam,
Madurai-625 020.

2.The Deputy Commissioner GST (Appeals),
514, Dr.Thangaraj Road, Tallakulam,
Madurai-625 020.

MOHAMMED SHAFFIQ, J.

BTR

W.P(MD)No.19502 of 2024

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