BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.19974 of 2024
and
W.M.P(MD)Nos.16950, 16951 & 16952 of 2024

M/s.Syedsirajudeen,
Represented by its Proprietor,
Syed Sirajudeen. ... Petitioner

Vs.

Deputy Commercial Tax Officer,
Tuticorin-II Assessment Circle,
No.6, North Cotton Road,
Thoothukudi,
Tamil Nadu-628 001. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to all for the records pertaining to the order passed by the respondent in Order No.ZD331023081392T, dated 13.10.2023 and quash the same as illegal and consequently to direct the respondent remand the matter for reconsideration and pass such further or other orders as this Court.

For Petitioner : Mr.P.Selvakumar

For Respondent : Mr.J.K.Jayaselan
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order issued by the respondent in Order No.ZD331023081392T, dated 13.10.2023 for the period April 2021 - March 2022.

2. The impugned order is challenged on the premise that the show cause notices calling upon the petitioner for personal hearing as well as the impugned order was uploaded in the GST portal, the petitioner was unable to access the GSTIN portal and thus could not participate in the adjudication proceedings.

3. The limited issue that arises for consideration in the impugned order is the alleged mismatch between GSTR-7 and GSTR-3B. It is 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 between GSTR-7 and GSTR-3B.

4. It is also submitted that under similar circumstances, this Court was pleased to grant an opportunity by placing 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 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 Government Advocate appearing for the respondent does not have any serious objection.

6. In view thereof, the impugned order 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 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. If the above deposit is not paid or the objections 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.

6.1. It is submitted that garnishee proceedings has also been initiated by the respondent. In view of the order passed in the present writ petition setting aside the order of adjudication, the respondent shall keep the garnishee proceedings in abeyance until the expiry of the period of two weeks, within which the petitioner must pay 25% of the taxes that are due. If the petitioner fails to remit the disputed tax within the stipulated period, the respondent is at liberty to resort to recovery proceedings including garnishee proceedings.

7. This writ petition stands disposed of with the above direction. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

21.08.2024

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

To

Deputy Commercial Tax Officer,
Tuticorin-II Assessment Circle,
No.6, North Cotton Road,
Thoothukudi,
Tamil Nadu-628 001.

MOHAMMED SHAFFIQ, J.

BTR

W.P(MD)No.19974 of 2024

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