BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.20845 of 2024
and
W.M.P.(MD)Nos.17675 and 17676 of 2024

M/s.K.R.Estates Builders,
No.333/1, Courtralam Road,
Tenkasi District,
Represented by its Sole Proprietor,
Kalidasan Rajagopalan ... Petitioner

Vs.

The Assistant Commissioner (ST) (FAC),
Tenkasi District,
Tenkasi. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the order dated 14.12.2023 in GSTIN.33ACQPR3056D1ZL/2017-2018 passed by the respondent, set aside the same and to direct the respondent to redo the assessment for the year 2017-2018 by providing an opportunity to the petitioner.

For Petitioner : Mr.M.Dinesh Hari Sudarsan

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

ORDER

The present Writ Petition is filed challenging the order dated 14.12.2023, on the premise that the petitioner was found to have allegedly indulged in bill trading activity that issuance of invoices without involvement of/supply of goods.

2. It is found in the assessment order that a show cause notice was issued in Form DRC 01 on 08.08.2023 through GST portal. However, the petitioner had not chosen to file any objection neither appeared for personal hearing. Subsequently, three reminders were also sent calling upon the petitioner to appear for personal hearing which was also not availed of by him.

3. It is submitted by the learned counsel for the petitioner that the petitioner concern is not indulged in the building construction and it is registered under GST Act. The petitioner has also paid appropriate taxes and returns regularly. The petitioner was unaware of the personal hearing dates in the show cause notice, as it had been uploaded in the GSTIN portal. It was

further submitted that the petitioner was unable to access the GSTIN portal and thus unable to file his objection.

4. The limited issue that arises for consideration is that the respondent while perusing the petitioner's GSTR-3B returns for the year 2017-2018, found that the petitioner had wrongly claimed the Input Tax Credit in respect of invoices with regard to which it was found in the impugned order that there was no involvement / supply of goods. 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.

5. 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***.

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 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 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 are not filed within the stipulated period, i.e., two weeks and four weeks respectively, from the date of receipt of a copy of this order, 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 petitions are closed.

19.10.2024

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

To:

The Assistant Commissioner (ST) (FAC),
Tenkasi District,
Tenkasi.

MOHAMMED SHAFFIQ, J.

Nsr

W.P.(MD)No.20845 of 2024

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