BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.08.2024

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.20675 of 2024
and
W.M.P.(MD)Nos.17536 & 17537 of 2024

M/s.Home Style Merchandise Pvt.Ltd,
Represented by its Director Mr.Sureshkumar
No.306A, Bharathi Nagar,
M.G.Road, Karur
Tamilnadu-639 002.
GSTIN:33AACCH0979A1ZO ... Petitioner

Vs.

Office of the Superintendent of Central GST and Central Excise
Karur-II Range, Karur division,
No.15, Ground Floor, Gowripuram Extension,
Anna Nagar, Karur, Tamilnadu-639 002.
...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records on the file of the respondent in its impugned proceedings of the respondent order passed in DIN-20231259XN0400818941 vide order in Original No.35/2023-GST(SUPDT) dated 28.12.2023 and quash the same.

For Petitioner	:	Mr.Rajasekar, for M/s.R.Hemalatha
For Respondent	:	Mr.R.Gowrishankar Senior Standing Counsel

ORDER

The present Writ Petition is filed challenging the impugned order issued by the respondent in Original No.35/2023-GST(SUPDT) dated 28.12.2023.

2.The petitioner is engaged in the business of export of handloom, powerloom, autoloom of organic cotton. 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. It was submitted by the learned counsel for the petitioner that the petitioner was unable to access the GSTIN portal and was thus unable to participate in the adjudication proceedings.

3. The assessment order is passed *inter alia* rejecting the claim of ITC on the following grounds, viz.,

a) non-payment of GST under RCM on the freight amount paid;

b) ineligible ITC (blocked credit) availed during the audit period on free samples provided;

c) non/short payment of GST under RCM on services received from unregistered person during the period 01.07.2017 to 12.10.2017;

d) non-reversal of ITC on common credit used for both taxable and exempted supply for the period July 2017 to March 2020;

e) mismatch between GSTR-3B and GSTR-2A; and

f) non-submission of documents shown as zero rated clearance but subsequently claimed to be cancelled – Difference in declared value between GSTR-3B and GSTR-1.

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 above discrepancies.

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 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.

6.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.

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

30.08.2024

Index : Yes / No
Internet : Yes/ No
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To

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Karur-II Range, Karur division,
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MOHAMMED SHAFFIQ, J.

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