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.20736 of 2024
and
W.M.P.(MD)Nos.17573 & 17575 of 2024

Tvl.Milan Footwear,
Rep.by its proprietor M.Mohamed Imthiyaz,
27, Mariamman Kovil Street,
Cumbum,
Theni District-625516. ... Petitioner

Vs.

The State Tax Officer,
Uthamapalayam Assessment Circle,
Uthamapalayam-625533 ...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 of the respondent in GSTIN:33ANJPM4692C1ZO/2017-18 dated 22.12.2023 and quash the same as illegal, arbitrary and without jurisdiction.

For Petitioner : Mr.A.Chandrasekaran

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

ORDER

The present Writ Petition is filed challenging the impugned order issued by the respondent in GSTIN:33ANJPM4692C1ZO/2017-18 dated 22.12.2023.

2.The petitioner is a dealer in footwear and vegetables and he is challenging the order of adjudication dated 22.12.2023 for the period 2017 to 2018, on the premise that taxes have been levied on the sales of vegetables, which is exempted. That apart, the learned counsel for the petitioner would submit that the impugned order of assessment has been passed, without granting sufficient opportunity to the petitioner. DRC-01, though dated 30.11.2023, was actually uploaded in the portal only on 18.12.2023. The petitioner was required to respond to the above notice by 20.12.2023. The petitioner was unable to access the portal and was not able to respond. It is submitted that the impugned order came to be passed on 22.12.2023, ie., four days after the DRC-01 was uploaded and therefore, it is submitted that the impugned order suffers from the violation of principals of natural justice.

3.To the contrary, the learned Government Advocate for the respondent would submit that the impugned order has passed on 22.12.2023 and if the petitioner aggrieved by the same, they have to prefer an appeal or challenge the same by way of writ petition, within stipulated period. Instead, the petitioner filed the present petition, almost after 10 months since the date of passing of the order.

4.The limited issue that arises for consideration in the impugned order is the alleged mismatch between GSTR-3B and GSTR-2A. 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-3B and GSTR-2A.

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 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 petitions are closed.

30.08.2024

Index : Yes / No
Internet : Yes/ No
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To

The State Tax Officer,
Uthamapalayam Assessment Circle,
Uthamapalayam-625533

MOHAMMED SHAFFIQ, J.

gns

W.P.(MD)No.20736 of 2024

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