BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.21984 of 2024
and
W.M.P(MD)Nos.18650 & 18651 of 2024

Tvl.Sakthi Enterprises,
Represented by its Proprietor,
N.Mariappan. ... Petitioner

Vs.

The Deputy State Tax Officer-1,
Palayamkottai Assessment Circle,
Tirunelveli. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order passed by the respondent vide his order in GSTN:33APEPM9250P1ZE/2019-2020, dated 12.02.2024 and quash the same as it is illegal, without jurisdiction and in gross violation of principles of natural justice and further direct the respondent to re-do the assessment afresh after providing an opportunity of personal hearing as per the provisions of the GST Act and to pass such further or other orders as this Court.

For Petitioner : Mr.A.Satheesh Murugan

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

ORDER

The present writ petition has been filed challenging the impugned order passed by the respondent in GSTN:33APEPM9250P1ZE/2019-2020, dated 12.02.2024 for the assessment year 2019-2020 on the premise that the same is made in violation of principles of natural justice and also the procedure contemplated under the Tamil Nadu Goods and Services Tax Act, 2017.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a registered dealer under the TNGST Act. The petitioner had filed their returns and also paid appropriate taxes. There was an inspection by the Intelligence Wing (State Tax). During the course of such inspection, the following defects were noticed:

a) Discrepancy in reporting 3B and P & L Account Statement.

b) Mis-match between GSTR-3B and GSTR-2A.

c) Non-payment of GST under Reverse Charge Mechanism (RCM) for Reported Freight Charges.

d) Reversal of ineligible ITC under Blocked Credit.

e) Penalty proposed for non-filing of Annual return FORM GSTR-9C.

f) General penalty levied separately for non-filing of Annual return-GSTR9.

3. It is submitted by the learned Counsel for the petitioner that an intimation in DRC-01A, dated 15.11.2023 was issued followed by a show cause notice. Neither the show cause notices nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded in the GST portal. Hence, the petitioner was unable to access the GSTIN portal and was thus unable to participate in the adjudication proceedings. It is also submitted that the petitioner had paid entire taxes. It is further 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.

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,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes. The learned counsel for the petitioner would submit that the entire taxes have been paid and they may be granted an opportunity before the adjudicating authority to put forth their objections to the proposal.

5. Taking into account the peculiar facts of the case, wherein, the petitioner had reversed the entire Input Tax Credit and also paid the entire tax, this Court is of the view that the petitioner may be granted one final opportunity to put forth his objections, which was not objected to by the learned Additional Government Pleader for the respondent.

6. In view thereof, the impugned order, dated 12.02.2024 is set aside. The impugned order shall be treated as a show cause notice and the petitioner shall filed their objections within a period of two (2) weeks from the date of receipt of a copy of this order. If any such objections are filed within the stipulated

period, the respondent shall consider the same and pass appropriate orders in accordance with law after affording the petitioner a reasonable opportunity of hearing. If objections are not filed within the stipulated period, i.e., two weeks from the date of receipt of a copy of this order, 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.

20.09.2024

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

To

The Deputy State Tax Officer-1,
Palayamkottai Assessment Circle,
Tirunelveli.

MOHAMMED SHAFFIQ, J.

BTR

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