BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.21808 of 2024
and
W.M.P(MD)No.18439 of 2024

M/s.Manickam Company Firm
Rep. By its Partner P.Prabhu
156, North Veli Street,
Madurai- 625 001. ... Petitioner

Vs.

The State Tax Officer,
Inspection Cell-2,
O/o the Joint Commissioner (ST) Intelligence,
Madurai-20. ... 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 in the impugned order in Ref.No.ZD331223243511Z dated 28.12.2023 issued by the respondent and quash the same is wholly without jurisdiction and clear violation of statutory provisions.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.K.K.Jeyaseelan
Government Advocate

ORDER

The writ petition is filed challenging the impugned proceedings of the respondent bearing Ref.No.ZD331223243511Z dated 28.12.2023, for the Assessment year 2017-2018.

2. The impugned order is challenged on the premise that,

(a) the impugned order traverses beyond the show cause notice; and

(b) the impugned order has made without taking into account the submissions made during the course of investigation and the payments made already.

(c) Perusal of the impugned order would show that it is made on a gross non-application of mind to the material facts on record as evident from the fact that there is duplication of the liability under IGST. There has been levy of tax on discount, labour charges and rent. The very same sum are once again subject to tax under the head 'other income'.

3. The learned counsel for the respondent would submit that the impugned order was passed on 18.12.2023 and the writ petition has been filed much after the statutory period of limitation for filing the appeal is over.

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 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. It was further submitted that the petitioner had already paid tax of Rs.8,71,916/-, in addition to what is disclosed in the assessment order and his only request is that the same may be adjusted towards the 25% of the disputed tax, 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. The tax already paid by the petitioner in addition to the tax what is disclosed in the assessment order shall be adjusted towards the deposit of 25% of the disputed tax. 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.

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

18.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
PJL

To
The State Tax Officer,
Inspection Cell-2,
O/o the Joint Commissioner (ST) Intelligence,
Madurai-20.

MOHAMMED SHAFFIQ, J.

PJL

W.P(MD)No.21808 of 2024

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