BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.22856 of 2024
and
W.M.P.(MD)Nos.19386 and 19387 of 2024

Tvl.Vijaya Medicals,
Represented by its Proprietor,
Mr.Senthilkumar ... Petitioner

Vs.

The State Tax Officer,
Tuticorin-II Assessment Circle,
Tuticorin. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the respondent vide his order in Order No.GSTIN: 33BQLPS0535E1ZZ/2018-19 dated 26.04.2024 and quash the same as it is illegal and 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.

For Petitioner : Mr.A.Satheesh Murugan

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

O R D E R

The present Writ Petition is filed challenging the impugned proceedings dated 26.04.2024 on the premise that it is made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a dealer in retail medicine and registered under the GST Act. The petitioner filed its monthly returns and also paid appropriate taxes. It is submitted that show cause came to be issued in respect of three issues viz.,

i) Tax on outward supplies underdeclared as evident from reconciliation of data in GSTR-09

ii) Excess claim of Input Tax Credit in view of alleged mismatch between GSTR-3B and GSTR-2A.

iii) Input Tax Credit claimed under Section 16(4) of the Act, beyond the stipulated period.

3. It is further submitted by the learned counsel for the petitioner that the petitioner had in fact paid taxes in respect of issues (ii) and (iii) and the only issue with regard to which taxes are not yet discharged is the difference between GSTR-3B and GSTR-9. A show cause notice in Form GSTR DRC-01 was

served on the petitioner. The petitioner had submitted its response to the said notice vide reply dated 29.12.2023. The order of assessment records that perusal of the reply revealed that it related to the assessment year 2017-2018, while notice was reference to the assessment year 2018-2019. Thereafter, personal hearing was fixed on 22.02.2024, 15.03.2024 and 08.04.2024. However, the petitioner had not availed of the opportunity of personal hearing which was granted. The learned counsel for the petitioner would submit that they are unable to avail of the opportunity of personal hearing as the notices were not tendered or sent by R-PAD, instead it was uploaded in the web portal and the petitioner had difficulties in accessing the portal.

4. 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 avail the opportunity of personal hearing. 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 the objections to the proposal, to which the learned Government Advocate appearing for the respondent does not have any serious objection.

5. 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.

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

25.09.2024

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

To:

The State Tax Officer,
Tuticorin-II Assessment Circle,
Tuticorin.

MOHAMMED SHAFFIQ, J.

Nsr

W.P.(MD)No.22856 of 2024

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