BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2024

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.23074 of 2024
and
W.M.P.(MD).Nos.19557 and 19559 of 2024

M/s.Chendur Pandi Engineering Works,
Represented by its Proprietor,
Balaganesan. ... Petitioner

Vs.

The Commercial Tax Officer (State),
Tuticorin-II Assessment Circle,
No.6 R, North Cotton Road,
Thoothukudi,
Tamil Nadu – 628 001. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the respondent in Order No.ZD330723024756D dated 07.07.2023 in respect of tax period from SEP 2022 - SEP 2022 and quash the same as illegal and direct the respondent to remand the matter for reconsideration.

For Petitioner	:	Mr.S.Muthu Kumar Raja
For Respondents	:	Mr.R.Sureshkumar Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order of assessment dated 07.07.2023, whereby, the tax liability of Rs.6,79,673/- was arrived at on the basis of discrepancy between GSTR-7 and GSTR-3B for the period September 2022.

2. It is submitted by the learned counsel for the petitioner that the above sum has been remitted by the petitioner as early as in December 2022 and thus, no further tax is due. It is further submitted that despite the fact that the entire tax has already been discharged, recovery proceedings have been initiated and as a matter of fact, a sum of Rs.2,64,000/- has been recovered, which is in excess of the tax liability arrived in the impugned order dated 07.07.2023.

3. To the contrary, it is submitted by the learned Additional Government Pleader for the respondent that the only sum recovered from the petitioner out of the total tax liability of Rs.6,79,673/- is Rs.2,64,000/- and the remaining sum is unpaid.

4. It is submitted by the learned counsel for the petitioner that recovery proceedings have been initiated by way of garnishee proceedings and garnishee

notice was issued to the petitioner's principal vendor, which is not enclosed in the typed set of papers as the same was not served on the petitioner, but was informed orally.

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 show cause notices and the order of adjudication. It was further submitted that the petitioner is aggrieved by the impugned order as they were unable to put forth their objections in view of the fact that they were unaware of the notices being uploaded in the GSTIN portal. It was submitted that out of the total demand of Rs.6,79,673/-, a sum of Rs.2,64,000/- has already been recovered, which works out to more than 25% and would thus request that the petitioner may be granted an opportunity before the adjudicating authority to put forth their objections to

the proposal, to which, the learned Additional Government Pleader for the respondent does not have any serious objection.

7. The learned Additional Government Pleader would submit that the petitioner may submit its reply, which would be considered and assessment would be redone by taking into account the sums that have been deposited/remitted by way of tax. He would further submit that the recovery proceedings would be kept in abeyance until the assessment is made afresh.

8. Recording the same, the impugned order passed by the respondent dated 07.07.2023 is set aside. The impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of two (2) 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. Recovery proceedings shall be kept in abeyance until the assessment order is passed. 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 restored.

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

26.09.2024

Index : Yes / No
Internet : Yes/ No
Lm

To
The Commercial Tax Officer (State),
Tuticorin-II Assessment Circle,
No.6 R, North Cotton Road,
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Tamil Nadu – 628 001.

MOHAMMED SHAFFIQ, J.

Lm

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