**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 26.09.2024**

**CORAM**

**THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

**W.P.(MD).No.23075 of 2024**
**and**
**W.M.P.(MD).Nos.19558, 19560 and 19561 of 2024**

M/s.K.Swaminathan,
Represented by its Proprietor,
Swaminathan. ... Petitioner

**Vs.**

The Deputy 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.ZD331123010693Y dated 02.11.2023 and quash the same as illegal and direct the respondent to remand the matter for reconsideration.

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| For Petitioner | : | Mr.S.Muthu Kumar Raja |
| For Respondents | : | Mr.R.Sureshkumar<br>Additional Government Pleader |

**ORDER**

The present Writ Petition is filed challenging the impugned order of assessment dated 02.11.2023 relating to the assessment year 2018-2019.

2. The impugned order is challenged on the premise that neither the show cause notices nor the impugned order of assessment has been served on the petitioner and it had been uploaded in the GSTIN portal. It was further submitted that the petitioner was unable to access the GSTIN portal and thus unable to participate in the adjudication proceedings.

3. The limited issue that arises for consideration in the impugned order is the alleged mismatch between GSTR-7 and GSTR-3B. 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-7 and GSTR-3B.

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 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.

6. It is submitted by the learned counsel for the petitioner that a garnishee notice has been issued to the petitioner's employer, although a copy of the same is not enclosed in the typed set of papers as the said notice has not been served to the petitioner. It is further submitted that if any such proceedings have been initiated, the same may be kept in abeyance for a period of four weeks from the date of receipt of a copy of this order, within which, the petitioner would pay 25% of the disputed tax. The same was agreed to by the learned Additional Government Pleader for the respondent.

7. In view thereof, the impugned order is set aside and the petitioner shall deposit 25% of the disputed tax within a period of four (4) 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. Recovery proceedings shall be kept in abeyance for a period of four weeks from the date of receipt of a copy of this order. If the above deposit is not paid or the objections are not filed within the stipulated period, i.e., four weeks from the date of receipt of a copy of this order, the impugned order of assessment shall stand revived and it is open to the respondent to proceed with the recovery proceedings.

8. 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,
Thoothukudi,
Tamil Nadu – 628 001.

**MOHAMMED SHAFFIQ, J.**

Lm

**W.P.(MD).No.23075 of 2024**

**26.09.2024**