BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.23469 of 2024
and
W.M.P.(MD)Nos.19867 and 19868 of 2024

M/s.A.Rajesh Kumar – Contractor (33AKJPR8721J1ZS),
Represented by its Proprietor,
Mr.Alagar Rajesh Kumar,
5/691, NGO Colony, Trichy Road,
Dindigul – 624 005. ... Petitioner

Vs.

The State Tax Officer,
Office of the Assistant Commissioner (ST),
Dindigul Rural Assessment Circle,
Commercial Tax Offices Building,
Sub-Collector Tax Office Road,
Dindigul – 624 001. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the impugned order on the file of the respondent vide GSTIN: 33AKJPR8721J1ZS/2018-19 dated 20.03.2024 to quash the same which was made by imposing tax on exempted goods (Vegetables) is legally not valid.

For Petitioner : Mr.J.Madhusuthanan

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

O R D E R

The present Writ Petition is filed challenging the impugned order dated 20.03.2024 on the premise that the supply of vegetables has been subjected to tax though the same is exempted and thus falls foul of Article 265 of Constitution of India.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of construction and supply of vegetables which according to the petitioner is exempted under GST Act. The petitioner is registered under GST Act and with regard to construction business, the petitioner has remitted appropriate taxes. The impugned order is passed after issuance of GSTR ASMT-10 followed by DRC 01A and DRC 01. The petitioner was undergoing medical treatment during the period and thus unable to respond to the notices. It was submitted that only during September 2024, the petitioner was aware of the fact that the impugned order has been made.

3. The limited issue that arises for consideration in the impugned order is the alleged mismatch between GSTR-9 and GSTR-3B and legality of the

disallowance of exemption claimed by the petitioner on the stated supply of vegetables. 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-1 and GSTR-3B and the correctness/ legality of the exemption claimed by the petitioner on supply of vegetables.

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 petitioner underwent medical treatment during the relevant period and it was only in view of the same, petitioner was unable to respond to the above notices and the order of adjudication. It was further 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, to which the learned Additional Government Pleader 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. 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.

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

01.10.2024

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

Note: Issue order copy by 16.10.2024

To:

The State Tax Officer,
Office of the Assistant Commissioner (ST),
Dindigul Rural Assessment Circle,
Commercial Tax Offices Building,
Sub-Collector Tax Office Road,
Dindigul – 624 001.

MOHAMMED SHAFFIQ, J.

Nsr

W.P.(MD)No.23469 of 2024

01.10.2024