BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2024

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.24475 of 2024
and
W.M.P.(MD).No.20803 of 2024

M/s.Sagar Brush Industries,
Represented by its Proprietor,
Mr.Prem Sagar. ... Petitioner

Vs.

The Assistant Commissioner (ST) (FAC),
Thirupparankundram Assessment Circle,
Commercial Taxes Buildings,
Madurai. ...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 relating to impugned assessment order issued by the respondent in GSTIN 33AKJPP1272E1ZD / 2018-2019 dated 25.04.2024 and quash the same as arbitrary and illegal and direct the respondent to pass an assessment order afresh after affording the opportunity of personal hearing.

For Petitioner	:	Mr.S.Karunakar
For Respondent	:	Mr.R.Sureshkumar Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order of assessment dated 25.04.2024 on the premise that the same is made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in manufacture and supply of paint brushes and is a registered dealer under the GST Act. While so, the Joint Commissioner (ST), Madurai Division has issued authorization for conducting audit in the petitioner's place of business for the period 2017-2018 to 2021-2022. During the course of audit, the following discrepancies were noticed for the period 2018-2019, viz.,

a) Discrepancy between GSTR-3B and GSTR-1,

b) Discrepancy in the ITC claimed in terms of GSTR-3B vis-a-vis GSTR-2A.

Pursuant to the same, DRC-01 show cause notice was issued and the impugned order of assessment dated 25.04.2024 was passed, confirming the proposal.

3. 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 by tender or RPAD, instead 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.

4. The limited issue that arises for consideration in the impugned order is the alleged mismatch between GSTR-3B vs GSTR-1 and GSTR-3B vs GSTR-2A. 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 above discrepancies.

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 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. It is further submitted that subsequent to the passing of the impugned order, the petitioner has remitted amounts in excess of the admitted tax and his only request is that the same may be adjusted towards 25% of the disputed tax, to which the learned Additional Government Pleader appearing for the respondent does not have any serious objection.

7. 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 respondent shall take into account the amount remitted by the petitioner in excess of the admitted tax, while reckoning 25% of the disputed tax. 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 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.

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

18.10.2024

Index : Yes / No
Internet : Yes/ No
Lm

To
The Assistant Commissioner (ST) (FAC),
Thirupparankundram Assessment Circle,
Commercial Taxes Buildings,
Madurai.

MOHAMMED SHAFFIQ, J.

Lm

W.P.(MD).No.24475 of 2024

18.10.2024