BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.25365 of 2024
and
W.M.P.(MD)No.21519 of 2024

M/s. AVD Logistics,
Represented by its Proprietor,
A.Viswanathan ... Petitioner

Vs.

The Assistant Commissioner (ST),
Tuticorin – 1, Assessment Circle,
Tuticorin. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records in the impugned order Ref.No.ZD3312232597098 dated 29.12.2023 issued by the respondent and quash the same is wholly without jurisdiction and clear violation of statutory provisions of the Act.

For Petitioner : Mr.S.Karunakar

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

O R D E R

The present Writ Petition is filed challenging the order dated 29.12.2023 relating to the assessment year 2017-2018.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in providing logistics service. The petitioner is a registered dealer under GST Act. The petitioner had filed its returns and paid appropriate taxes. On scrutiny of GSTR-3B and GSTR-2A under Section 61 of the TNGST Act, it was found that there were discrepancies inasmuch as the petitioner suppliers have not filed their returns. Hence, a notice was issued to reverse the wrong claim of Input Tax Credit. There were also discrepancies between GSTR-3B and GSTR-1. The petitioner had submitted its reply along with supported documents.

3. It is submitted by the learned counsel for the petitioner that show cause notice dated 01.08.2023 and personal hearing notice fixing the date as 04.10.2023, 26.10.2023 and 28.11.2023, were issued only through GSTIN portal. However, the petitioner had not responded to the said notices. The respondent thus proceeded to pass the impugned order of assessment dated

27.12.2023. Neither the show cause notice nor the impugned order of assessment has been served on the petitioner and it had been uploaded in the GSTIN portal. It is submitted that the petitioner was unable to participate in the adjudication proceedings in view of heavy floods and also in view of the fact that they are in difficulty in accessing the portal.

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

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 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.

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. 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.

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

24.10.2024

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

To:

The Assistant Commissioner (ST),
Tuticorin – 1, Assessment Circle,
Tuticorin.

MOHAMMED SHAFFIQ, J.

Nsr

W.P.(MD)No.25365 of 2024

24.10.2024