BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2024

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.25242 of 2024
and
W.M.P.(MD).No.21432 of 2024

Tvl.HI TECH OVERSEAS,
Represented by its Proprietor,
C.Muthuraj. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
Office of the Principal and
Special Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai – 600 005.

2.The Deputy State Tax Officer I,
Dindigul Rural Assessment Circle,
Sub Collector Office Road,
Dindigul – 624 001. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to impugned order of the 2nd respondent in GSTIN:33AKCPM3812E1ZP/2018-19 dated 26.03.2024 and quash the same.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.R.Sureshkumar
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 26.03.2024 relating to the assessment year 2018-2019.

2. The impugned order was passed on the premise that the petitioner has not declared the correct tax liability while filing annual returns in GSTR-09. It was also found that ITC has been availed without complying with the condition under Section 16(2)(c) of the GST Act, which provides that ITC can be availed subject to condition that taxes have actually been paid by the supplier of the claimant to the Government. It was also found that the petitioner has availed ITC, which is ineligible in terms of Section 17(5) of the Act.

3. It is submitted by the learned Additional Government Pleader appearing for the respondent that though notice was issued in Form GST DRC-01 and personal hearings were offered, the petitioner neither replied to the same nor attended the personal hearing.

4. The learned counsel for the petitioner would submit 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. It is submitted that if the petitioner is provided with an opportunity, he would be able to put forth its case.

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, 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 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.

23.10.2024

Index : Yes / No
Internet : Yes/ No
Lm

To

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   Chepauk,
   Chennai – 600 005.

2. The Deputy State Tax Officer I,
   Dindigul Rural Assessment Circle,
   Sub Collector Office Road,
   Dindigul.

MOHAMMED SHAFFIQ, J.

Lm

W.P.(MD).No.25242 of 2024

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