IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.1036 of 2025
and
WMP.Nos.1288 & 1290 of 2025

Bharathi Steels,
Rep.by prop.Santiagomani Arulmozhi,
D 172, Bharathi Steels,
Iron and Steel Market,
Santhangadu, Manali,
Chennai, Tamil Nadu – 600 068. ... Petitioner

Vs.

1.The Deputy Commissioner (ST) (FAC)
GST Appeal, Chennai – I,
3rd Floor, C.T.Annexe Building,
No.1, Greams Road, Chennai – 600 006.

2.The State Tax Officer,
Manali Assessment Circle,
Room No.101, 1st Floor, Integrated
C.T.Buildings, Chennai – 600 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to order in Reference No.ZD3312232601116 dated 29.12.2023 passed by the 2nd respondent and Memorandum vide Rc.No.3622/2024/A1 dated 26.11.2024 passed by the 1st respondent and to quash the same and to direct the 1st respondent to accept the statutory appeal filed under Tamil Nadu GST Act, 2017 dated 13.09.2024 against recovery order of the 2nd respondent in Order No.ZD3312232601116 dated 29.12.2023 without reference to limitation.

For Petitioner : Mrs.Y.Kavitha
for M/s.P.V.S.Giridhar Associates

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 29.12.2023 relating to the assessment year 2017-18.

2.It is submitted by the learned counsel for the petitioner that the petitioner is a proprietorship firm and engaged in business of Iron and Steel cutting sheets, CRCA sheets, M s Sheet and is registered under TNGST Act 2017/CGST Act 2017. During the relevant period 2017-18, the petitioner filed its returns periodically and paid the appropriate taxes. During the course of scrutiny, it was noticed that the petitioner had claimed excess input tax credit over and above that of the tax paid under reverse charge mechanism.

3.It is submitted by the learned counsel for the petitioner that an intimation in ASMT-10 was issued on 13.07.2023, followed by a notice in DRC-01 on 19.09.2023. Since the petitioner had not responded, the impugned order came to be passed confirming the proposal. Immediately, the petitioner preferred an appeal, which was rejected on the ground that it was barred by limitation.

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,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes.

5. It was submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that they 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, an appeal was also preferred and payment of 10% of disputed tax was made as pre-deposit and his only request is that the same may be adjusted towards 25% of the disputed tax, to which the learned Government Pleader appearing for the respondent does not have any serious objection.

6. By consent of both parties, the writ petition stands disposed of on the following terms:

a) The impugned order dated 29.12.2023 is set aside.

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondent, within a period of four weeks from the date of receipt of a copy of this order.

c) If any amount has been recovered or paid out of the disputed taxes, including by way of pre-deposit in appeal, the same would be reduced/adjusted, from/towards the 25% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 25 % of disputed taxes to be paid, if any, within a period of one week from the date of receipt of a copy of this order. The petitioner shall deposit such remaining sum within a period of three weeks from such intimation.

d) The entire exercise of verification of payment, if any, intimation of the balance sums, if any, to be paid for compliance with the direction of payment of 25% of the disputed taxes, after deducting the sums already paid and payment by the petitioner of the balance amount, if any, on intimation in compliance with the above direction shall be completed within a period of four weeks from the date of receipt of copy of this order.

e) Failure to comply with the above condition viz., payment of 25% of disputed taxes within the stipulated period i.e., four weeks from the date of receipt of a copy of this order shall result in restoration of the impugned order.

f) If there is any recovery by way of attachment of Bank account or garnishee proceedings, the same shall be lifted /withdrawn on complying with the above condition viz., payment of 25 % of the disputed taxes.

g) 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. It is made clear that if the above conditions viz., 25% of disputed taxes is not complied or objections are not filed within the stipulated period, four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

7. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
sms

21.01.2025

To

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MOHAMMED SHAFFIQ, J.

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