IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.509 of 2025
and
W.M.P.Nos.599 and 600 of 2025

Star Online,
Rep. by its proprietor,
Mohammed Ali Safrin,
No.7, Aiswarya Complex,
Duraisamy Road, T.Nagar, Chennai 600 017. .. Petitioner

Vs.

Assistant Commissioner ST,
Nandanam Assessment Circle,
No.46, Mylapore Taluk Office Building,
Nandanam, Chennai 600 028. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the impugned order of the respondent passed in GSTIN:33AVSPS4311B1ZR/2018-2019 dated 29.04.2024 and quash the same.

For Petitioner : Ms.Divya
for N.Murali

For Respondent : Mrs.K.Vasanthamala
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent in GSTIN:33AVSPS4311B1ZR/2018-2019 dated 29.04.2024 .

2. It is submitted by the learned counsel for the petitioner that during the period 2018-19, the petitioner was a dealer in Sim Card of Aircel and was registered under the GST Act. It is also submitted that the petitioner stopped its business activity and its registration was cancelled on 01.06.2023. During the relevant period of 2018-19, the petitioner had filed the returns and paid appropriate taxes. However, on scrutiny of returns filed by the petitioner it was found that excess Input Tax Credit has been claimed over and above that of the tax paid under the reverse charging mechanism.

3. It is submitted by the learned Counsel for the petitioner that a notice in DRC 01 was issued on 29.01.2024 followed by three reminders viz., 29.03.2024, 12.04.2024 and 26.04.2024. However, the petitioner neither filed any reply nor availed the opportunity of personal hearing.

Hence, the respondent, passed the impugned order confirming the proposal. It is further submitted by the learned counsel for the petitioner that neither the show cause notices nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded in "view additional notices" column in GST Portal, thereby, the petitioner was unaware of the impugned order of assessment. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, he would be able to submit proper supporting documents to explain the alleged discrepancy.

4. The learned counsel for the petitioner would then 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. The learned counsel for the petitioner would submit that they may be granted an opportunity before the adjudicating authority to put forth their objections to the proposal to which the learned Government Advocate

appearing for the respondent does not have any serious objection.

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

a) The impugned order dated 29.04.2024 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 of 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.

6. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

08.01.2025

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

To:

Assistant Commissioner ST,
Nandanam Assessment Circle,
No.46, Mylapore Taluk Office Building,
Nandanam, Chennai 600 028.

MOHAMMED SHAFFIQ, J.

spp

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