IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.411 of 2025
and
W.M.P.Nos.467 and 468 of 2025

Tvl.Sree Ram Engineers,
Rep. by its Proprietor Mr.Jayaraman,
88, ASK Nagar Main Road, 3rd Street,
Chennai 600 088. .. Petitioner

Vs.

Deputy Commercial Tax Officer,
Jurisdiction:Saidapet : South-II,
Chennai South, Tamil Nadu. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records on the file of the respondent passed in GSTIN 33AJQPJ9042G1Z2 dated 16.04.2024 along with order under Section 73 and Form GST-07 both having Reference No.ZD330424130905L and dated 17.04.2024 for the tax period April 2018 - March 2019 relating to Financial Year 2018-19 and Consequential Order rejecting Application for Rectification having Ref.No.ZD330824205862F dated 23.08.2024 and quash the same.

For Petitioner : Mr.K.K.Arjun

For Respondent : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present writ petition is been filed challenging the impugned order passed by the respondent in GSTIN 33AJQPJ9042G1Z2 dated 16.04.2024 along with Form GST DRC-07 dated 17.04.2024 and the consequential order rejecting the application for Rectification having Ref.No.ZD330824205862F dated 23.08.2024 .

2. It is submitted by the learned counsel for the petitioner that the petitioner is a registered dealer under the GST Act. 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 there was under declaration of tax on outward supplies.

3. It is submitted by the learned Counsel for the petitioner that a notice in DRC 01 was issued on 28.12.2023. Personal hearings were also granted to the petitioner viz., 29.01.2024, 05.02.2024, 23.02.2024 and 05.03.2024 and the impugned order dated 16.04.2024 came to be passed. Thereafter, the petitioner filed a Rectification petition dated 03.07.2024.

But without considering the rectification petition filed by the petitioner, the impugned order was passed rejecting the rectification petition. 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 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 Special Government Pleader 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 16.04.2024 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.

h) In view of the fact the impugned order is now been set aside, the prayer challenging the rejection of the rectification petition may no longer survive.

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:

Deputy Commercial Tax Officer,
Jurisdiction:Saidapet : South-II,
Chennai South, Tamil Nadu.

MOHAMMED SHAFFIQ, J.

spp

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