IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.1772 of 2025
and
WMP Nos.2019 & 2020 of 2025

Tvl.Arjun Constructions,
Rep.by its Proprietor Mr.A.P.Arjun,
No.5/75, NA, 1st Main Road, Vijayanagaram,
Medavakkam, Chennai,
Kancheepuram-600 100. ... Petitioner

Vs.

1.The Deputy Commissioner (CT),
GST Appeals, Chennai – II,
Greams Road, Chennai – 600 006.

2.The Deputy State Tax Officer,
Medavakkam Assessment Circle,
Integrated Commercial Taxes and
Registration Department Building (South Tower),
Nandanam, Chennai - 600 035. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari to call for the records of the 2nd respondent in order dated 04.10.2023 in GSTIN 33ADZPA8402G1ZL/2020-21 and quash the same as illegal, arbitrary and in violation of principle of natural justice.

For Petitioner ... Ms.C.Rekhakumari

For Respondents ... Mrs.K.Vasanthamala
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 04.10.2023 relating to the assessment year 2020-21.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in Works Contractor and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2020-21, the petitioner filed its returns and paid the appropriate taxes. While so, there was an inspection of the petitioner's place of business and residence, during which, it was noticed that the petitioner had claimed input tax credit on the basis of the alleged purchases effected from the fictitious dealers.

3. It is submitted by the learned counsel for the petitioner that a notice was issued in DRC 01A to the petitioner on 01.03.2023, followed by a notice in DRC01 on 21.03.2023 and reminder on 05.05.2023 to which the petitioner filed its reply on 17.05.2023. Thereafter, reminders were issued on 11.07.2023 & 25.08.2023. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. It is 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 the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies.

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 Additional 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 10.07.2023 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 petitions are closed.

Speaking (or) Non Speaking Order **27.01.2025**
Index : Yes/ No
Neutral Citation: Yes/No
sms

To

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MOHAMMED SHAFFIQ, J.

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