IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.937 of 2025
and
W.M.P.Nos.1129 and 1131 of 2025

M/s.Nihar Coconut Oil Industries,
Rep. by its Proprietor,
Mrs.S.Radha,
No.63/1, Padiyandipalayam,
Veeranampalayam Post, Kangayam,
Tiruppur 638 701. ..Petitioner

Vs.

Assistant Commissioner (ST)
Kangeyam Assessment Circle,
No.260-261, Tirpur Main Road,
Kangeyam, Tiruppur 638 701. .. 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/33AGLPR7210A1ZS/2017-18 dated 26.10.2022 and quash the same.

For Petitioner : Ms.A.Divya

For Respondent : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 26.10.2022, passed by the respondent in GSTIN/33AGLPR7210A1ZS/2017-18, on the premise that the same is made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a manufacturer and dealer in Edible Vegetable Oil and is registered under the GST Act. During the relevant period of 2017-18, the petitioner had filed the returns and paid appropriate taxes. However, on scrutiny of returns filed by the petitioner it was found that the petitioner had claimed Input Tax Credit on the basis of invoices from Tvl.Shri Sendhur Agro and Oil Industries., who is allegedly fictitious dealer.

3. It is submitted by the learned counsel for the petitioner that a notice in Form DRC 01 A was issued to the petitioner on 01.04.2022, followed by a notice in DRC 01 dated 10.06.2022. In response the petitioner submitted its manual reply dated 07.07.2022. However, the

reply was not considered as it was not supported by relevant documentary evidence and thus the impugned order came to be passed confirming the proposal. 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.

5. 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 Special 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 26.10.2022 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.

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

20.01.2025

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

To:

Assistant Commissioner (ST)
Kangeyam Assessment Circle,
No.260-261, Tirpur Main Road,
Kangeyam, Tiruppur 638 701.

MOHAMMED SHAFFIQ, J.

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