IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.727 of 2025
and
W.M.P.Nos.884 and 885 of 2025

M/s.Guru Constructions,
Rep. by J.Balachander,
Partner,
70/128A, Ayya Gounder Street,
Valapady, Salem 636 115. ..Petitioner

Vs.

The Assistant Commissioner (ST),
Ayyothyapattinam Circle,
Salem. .. 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 files of the respondent in GSTIN.33AAJFG5247J1ZA/2018-19 dated 10.07.2024 and quash the same.

For Petitioner : Mr.V.Srikanth

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present writ petition has been filed challenging the impugned order dated 10.07.2024 passed by the respondent in GSTIN.33AAJFG5247J1ZA/2018-19, 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 engaged in the business of executing civil and building contract works and is registered under the GST Act. During the relevant period of 2018-19, the petitioner has filed the returns and paid appropriate taxes.

3. It is submitted by the learned counsel for the petitioner that at every stage of the assessment proceedings there has been different proposal made by the officer. It is submitted that DRC 01A dated 28.09.2022 contained a proposal to levy tax on the premise that there is mismatch between GSTR 3B and GSTR 7. While, the show cause notice in DRC 01 dated 29.01.2024, contained a proposal on the basis that there

is a discrepancy / mismatch between GSTR 3B and GSTR 2A. Whereas, the order of assessment proceeds to confirm the levy in respect of both the above discrepancies viz., mismatch between GSTR 3B and GSTR 7 and mismatch between GSTR 3B and 2A. It was thus submitted that the impugned order ought to have confined itself to the proposal in DRC 01 viz., mismatch between GSTR 3B and GSTR 2A. The impugned order insofar as it proceeds to levy tax on the mismatch between GSTR 3B and GSTR 7 is thus hit by Section 75(7) of the Act.

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. It is submitted by the learned counsel for the petitioner that they are ready and willing to pay 25% of the disputed taxes arising out of the alleged mismatch between GSTR 3B and GSTR 2A 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 Government Advocate appearing for the respondent does not have any serious objection while stating that they may be granted liberty to redo the assessment with regard to the mismatch between GSTR 3B and GSTR 7 as set out in DRC 01A.

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

a) The impugned order dated 10.07.2024 is set aside.

b) The petitioner shall deposit 25% of the disputed taxes arising out of the alleged mismatch between GSTR 3B and GSTR 2A 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 arising out of the alleged mismatch between GSTR 3B and GSTR 2A directed to be paid. The assessing authority shall then intimate the balance amount out of 25 % of disputed taxes arising out of the alleged mismatch between GSTR 3B and GSTR 2A, 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 arising out of the alleged mismatch between GSTR 3B and GSTR 2A, 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 arising out of the alleged mismatch between GSTR 3B and GSTR 2A, 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 arising out of the alleged mismatch between GSTR 3B and GSTR 2A.

g) On complying with the above condition, the impugned order of assessment levying tax on mismatch between GSTR 3B and GSTR 2A, GSTR 3B and GSTR7, 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., payment of 25% of disputed taxes arising out of the alleged mismatch between GSTR 3B and GSTR 2A is not complied or objections are not filed within the stipulated period, i.e., four weeks 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.

21.01.2025

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

To:

The Assistant Commissioner (ST),
Ayyothyapattinam Circle,
Salem.

MOHAMMED SHAFFIQ, J.

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