IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.529 of 2025
and
W.M.P.Nos.623 and 624 of 2025

Shree Guru Engineering,
Rep. By its Proprietor N.Kathiravan,
44B, Electrical Industrial Estate,
Kakkalur, Tiruvallur,
Tamil Nadu 602 002. ... Petitioner

Vs.

State Tax Officer (FAC),
Tiruvallur Assessment Circle,
4/109, Integrated Goods and Services Taxes Building
2nd Floor, Chennai – Bangalore Highway,
Nazarthpettai, Chennai 123. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari call for the records of the respondent in Ref.No.ZD330424041669B and quash the order dated 04.04.2024 passed therein.

For Petitioner : M/s.S.Jecintha

For Respondent : Mrs.K.Vasanthamala,
Government Advocate.

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 04.04.2024 relating to the assessment year 2018-19.

2. The petitioner is registered under the Goods and Services Tax Act, 2017. During the relevant period of 2018-19, the petitioner filed its returns and paid the appropriate taxes. However, on verification of the petitioner's monthly returns in GSTR-3B, it was noticed that petitioner had availed Input Tax Credit from suppliers who were allegedly found to be non-existent or not conducting business from the place of which the registration was obtained.

2.1. Pursuant thereto, a Show Cause Notice in DRC-01 was issued on 10.11.2020, followed by reminder with personal hearing on 22.02.224. In response to the Show Cause Notice, the petitioner had filed its reply on 08.03.2023, while requesting for some more time to attend the personal hearing. However, the petitioner failed to avail the opportunity for a personal hearing even after the expiry of time sought by the petitioner. Hence, the impugned order came to be passed, confirming the proposal.

3. 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. 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 was further 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, 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 04.04.2024 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 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.

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

09.01.2025

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

MOHAMMED SHAFFIQ, J.

shk

To:

State Tax Officer (FAC),
Tiruvallur Assessment Circle,
4/109, Integrated Goods and Services Taxes Building
2nd Floor, Chennai – Bangalore Highway,
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