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.1551 of 2025
and
W.M.P.Nos.1783 and 1784 of 2025

M/s.Onkar Bearing Company,
Rep. by its Proprietor,
Mr.Onkar Nath Jaiswal,
New No.63, Old No.31,
Armenian Street, Chennai 600 001. .. Petitioner

Vs.

The Assistant Commissioner,
Broadway Assessment Circle,
Integrated Building for Commercial Taxes Dept.
Chennai North Division,
No.32, Elephant Gate Bridge Road, Vepery,
Chennai 600 003.
.. 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 of the respondent impugned order reference No.ZD3308243119880 dated 31.08.2024 under Section 73 of the CGST/TNGST Act, 2017 for the tax period 2019-20 and quash the same.

For Petitioner : Ms.S.Shamili

For Respondent : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 31.08.2024 passed by the respondent in Reference No.ZD3308243119880, 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 trading of bearings across India and is registered under the GST Act. During the relevant period of 2019-20, the petitioner has filed the returns and paid appropriate taxes. However, on scrutiny of returns submitted by the petitioner it was *inter alia* noticed that there was a mismatch between GSTR 3B and GSTR 1 and mismatch between GSTR 3B and GSTR 2A.

3. It is submitted by the learned counsel for the petitioner that a notice in ASMT 10 was issued to the petitioner on 12.07.2022, followed by a notice in Form DRC 01A dated 30.05.2023. Thereafter, a show

cause notice in Form DRC 01 was issued to the petitioner on 28.06.2023. Personal hearing was also granted to the petitioner on 31.08.2023 and 09.07.2024. In response to the show cause notice, the petitioner filed its reply dated 29.03.2024. However, it was found that the tax payer reply was not supported by relevant documents in support of the explanation of the discrepancies, thus the impugned order was 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 place reliance upon the recent judgment of this Court in the case of **Sree Manoj International Vs. Deputy State Tax Officer in W.P.No.10977 of 2024 dated 25.04.2024**, to submit that this court has remanded the matter back in similar circumstances subject to payment of 10% of the disputed taxes.

5. It was further submitted that the petitioner is ready and willing to pay 10% 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 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 31.08.2024 is set aside.

b) The petitioner shall deposit 10% 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 10% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 10 % 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 10% 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 10% 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 10 % 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., 10% 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.

27.01.2025

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

To:

The Assistant Commissioner,
Broadway Assessment Circle,
Integrated Building for Commercial Taxes Dept.
Chennai North Division,
No.32, Elephant Gate Bridge Road, Vepery,
Chennai 600 003.

MOHAMMED SHAFFIQ, J.

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