IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.883 of 2025 and
W.M.P.Nos.1054 & 1057 of 2025

Tvl.BHARTIA PULVERISERS,
REPRESENTED BY ITS PARTNER,
MR. JAGDAMBA PRASAD CHATURBHUJI BHARTIA,
No.11/2 Part B2, SIPCOT INDUSTRIAL PARK,
GUMMIDIPOONDI, THERVOYKANDIGAI,
CHENNAI, TAMIL NADU 601 202. ....Petitioner

Versus

ASSISTANT COMMISSIONER,
GUMMIDIPOONDI ASSESSMENT CIRCLE,
INTEGRATED BUILDING FOR COMMERCIAL TAXES DEPARTMENT,
CHENNAI NORTH DIVISION,
ROOM NO.112, 1ST FLOOR, ELEPHANT GATE BRIDGE ROAD,
CHENNAI 600 003. .... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, call for the records of the respondent in Order dated 08/05/2023 in GSTN:33AABFB5975E1ZN/2021-22 for the FY 2021-2022 and quash the same as illegal, arbitrary and in violation of principle of natural justice.

For Petitioner : Mr.Kumarpal Chopra
For Respondent : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order dated 08.05.2023 passed by the respondent relating to the assessment period 2021-2022.

2. The petitioner firm is a dealer in Iron steel raw-materials and is registered under the Goods and Service Tax Act, 2017. During the relevant period 2021-2022, the petitioner had filed its returns and paid the appropriate taxes. However, on comparison of the Input Tax Credit availed by the petitioner, it was found that there was mismatch between GSTR3B and GSTR2A.

3. Subsequently, an intimation notice in Form DRC-01A dated 06.07.2022, followed by a show cause notice in Form DRC-01 dated 29.11.2022 were issued to the petitioner through common portal. Thereafter, a reminder notice was also issued to the petitioner on 20.12.2022 and personal hearing opportunity was also granted to the petitioner. However, the petitioner had neither filed its reply nor

availed an opportunity of personal hearing. Hence, the impugned order came to be passed, confirming the proposals.

4. The impugned order is challenged on the premise that neither the show cause notices nor the impugned order of assessment has been served by tendering to the petitioner or by registered post, instead it was uploaded in the common portal under the head "View Additional Notices and Orders" tab, thereby, the petitioner was unaware of the initiated proceedings and thus unable to participate in the adjudication proceedings.

5. 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***. 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 Government Advocate appearing for the respondent does not have any serious objection.

6. By consent of parties, this writ petition stands disposed of on the following terms:

a) The impugned order dated 08.05.2023 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.

10.01.2025

Speaking (or) Non Speaking Order
Neutral Citation: Yes/No
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To
ASSISTANT COMMISSIONER,
GUMMIDIPOONDI ASSESSMENT CIRCLE,
INTEGRATED BUILDING FOR COMMERCIAL TAXES DEPARTMENT,
CHENNAI NORTH DIVISION,
ROOM NO.112, 1ST FLOOR, ELEPHANT GATE BRIDGE ROAD,
CHENNAI 600 003.

MOHAMMED SHAFFIQ, J.

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