IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.1793 of 2025
and
WMP.Nos.2041 & 2042 of 2025

A.R.V.Matachem Industries,
Rep.by its Proprietor Mr.Adhimoolam,
No.10, SIDCO Industrial Estate,
Cuddalore, Tamil Nadu – 607 303.
(GSTIN-33AIAPA2020NIZY) ... Petitioner

Vs.

The Commercial Tax Officer
Commercial Taxes Department,
Cuddalore (Taluk) Assessment Circle,
Cuddalore. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorarified Mandamus calling for the records on the files of the respondent pertaining to the impugned order dated 05.08.2024 passed in GSTIN: 33AIAPA2020NIZY/2019-20 and consequential DRC – 07 order bearing Reference No.ZD330824033790G, quash the same as illegal and consequently remand the case back to the file of the respondent to consider the case on merits afresh.

For Petitioner ... Mr.S.Rajesh

For Respondent ... Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 05.08.2024 relating to the assessment year 2019-20.

2.The petitioner is engaged in the business of supplying chemicals for metals. The petitioner is a registered dealer under Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. However, during the scrutiny of the return for the tax period, it was noticed that there was a mismatch between GSTR 3B and GSTR-2A.

2.1. Pursuant thereto, an intimation in DRC01A was issued to the petitioner on 14.05.2024 and a show cause notice in DRC01 was issued on 31.05.2024. The petitioner filed its reply, wherein, after stating that taxes are being paid voluntarily, has also requested to drop the proceedings initiated vide show cause notice dated 31.05.2024. However, the impugned order has been passed on the premise that the petitioner had filed its reply along with payment to DRC-03 dated 27.06.2024. Since the petitioner has paid the taxes due within 30 days from the date of show cause notice, penalty was dropped.

3. It is submitted by the petitioner that though the payment under DRC 03 was voluntarily made, however, they had also requested the Officers in the reply to drop the proceedings which was not considered. It may be relevant to refer to the reply filed by the petitioner, dated 27.06.2024, which reads as under :

"REPLY TO THE SHOW CAUSE NOTICE IN DRC01 DATED 31/05/2024

1.I received the show cause notice dated 31.05.2024 through email

2.The above said notice belongs to the period 2019-2020

3.The above said notice was based on the notification no 39/2021 dated 21.12.2021 with effect from January 2022.

4.The notice issued to me contains that I claimed input tax for the year 2023-2024 which was not true.

5.The notification mentioned in the notice i.e. notification no 39/2021 dated 21.12.2021 is prospective effect that is January 2022. But the notice it was used as retrospective effect which the law does not permits and against the natural justice.

6.There is no details available till date in GSTR2B for the period 2019-2020 in GST Portal

7.The ITC claim differs due to mechanism defect in GST PORTAL

8.However the tax was paid voluntarily DRC03-ENCLOSED

9.Since the notification which is prospective in nature was issued with retrospective effect which law does not permit and against natural justice it is requested to drop the proceedings.

Enclosed: Voluntary payment made DRC-03.

4.It was submitted by the petitioner that the payment of taxes in DRC 07 though voluntary, must be understood as having been made without prejudice to their contention against the levy of tax as proposed.

5.The learned counsel for the respondent would submit that they would consider the objections, however, the petitioner may no longer enjoy the immunity from penalty in terms of Section 73 of the Act, in view of the fact that the petitioner have now chosen to dispute its liability.

6. In view thereof, I am not inclined to express any view the submission made by either side while remanding the matter back to the respondent authority to redo the assessment afresh after affording the petitioner a reasonable opportunity of hearing.

7.In view thereof, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

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

27.01.2025

To

The Commercial Tax Officer
Commercial Taxes Department,
Cuddalore (Taluk) Assessment Circle,
Cuddalore.

MOHAMMED SHAFFIQ, J.

sms

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