IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.1749 of 2025
and
WMP.No.1996 of 2025

M/s.Sri Kanaka Durga Sarees
Rep.by its Proprietor Mr.Kannandahalli
Govindachetty Murugan
Shop No.4, Kamatchi Textile Market,
C.B.Road, Bargur, Tamil Nadu – 635 104. ... Petitioner

Vs.

1.The Deputy State Tax Officer,
Krishnagiri – II, Hosur,
Krishnagiri.

2.The Deputy Commissioner of Commercial
Taxes – Appeal,
Salem Commissionerate,
No.1 Foulkes Compound, AnaiMedu Rd,
Salem, Tamil Nadu – 636 001. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorarified Mandamus calling for the records of 1st respondent in ZD331223043915L dated 08.12.2023 and quash the same as illegal and consequentially remand back the matter to the 1st respondent for passing a fresh order after consideration of the explanation of the petitioner.

For Petitioner ... Mr.Kaushik Narayanan V

For Respondent ... Mr.TNC.Kavshik
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 08.12.2023 relating to the assessment year 2018-19.

2. The petitioner is engaged in the business and trade of textiles and garment. 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 found that the petitioner claimed excess ITC on inward RCM supplies in GSTR-3B table 4(A)(2)+(3) than the actual reverse charge liability declared and paid in table 3.1(d) of GSTR-3B.

2.1. Pursuant thereto, notices were issued in DRC-01A & DRC-01 to the petitioner on 11.09.2023 and 20.10.2023 respectively. However, the petitioner had neither filed its reply nor paid the appropriate taxes. Hence, the impugned order came to be passed, confirming the proposal.

3. It is submitted by the learned counsel for the petitioner that neither the show cause notice nor the impugned order of assessment has been served on the

petitioner by tender or sending it by RPAD, instead it had been uploaded in the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. It is further 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.

4. 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 Additional Government Pleader appearing for the respondent does not have any serious objection.

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

a) The impugned order dated 08.12.2023 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 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 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 petition is closed.

Speaking (or) Non Speaking Order
Index : Yes/ No **27.01.2025**
Neutral Citation: Yes/No
sms

To

1.The Deputy State Tax Officer,
Krishnagiri – II, Hosur,
Krishnagiri.

2.The Deputy Commissioner of Commercial
Taxes – Appeal,
Salem Commissionerate,
No.1 Foulkes Compound, AnaiMedu Rd,
Salem, Tamil Nadu – 636 001.

MOHAMMED SHAFFIQ, J.

sms

W.P. No.1749 of 2025
and
WMP.No.1996 of 2025

27.01.2025