IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.1498 of 2025
and
W.M.P.Nos.1756 and 1757 of 2025

D.Kartheesan
Proprietor, Royal Civil Tech,
No.1/128, Trunk Road,
Opp. Sri Ramachandra Medical College,
Iyyapanthangal 600 056.
Kancheepuram District. .. Petitioner

Vs.

Assistant Commissioner (ST)
Poonamallee Assessment Circle,
Station 4/109, Third Floor,
Bangalore Chennai Highway,
Varadarajapuram, Nazarathpet,
Chennai 600 123. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings in GSTIN:33AJEPK0127F1ZV/2019-20 dated 09.08.2024 passed for the year 2019-20, to quash the same and consequently direct the respondent to consider the matter afresh by providing sufficient opportunity of hearing.

For Petitioner : Mr.P.E.R.Mangala Suvigaran

For Respondent : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 09.08.2024, passed by the respondent in GSTIN:33AJEPK0127F1ZV/2019-20, 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 construction and selling of building, flats, etc., and is registered under the GST Act. During the relevant period of 2019-20, the petitioner had filed the returns and paid appropriate taxes. However, on scrutiny of returns submitted by the petitioner it was noticed that there was excess claim of Input Tax Credit.

3. It is submitted by the learned counsel for the petitioner that a notice in Form DRC 01 was issued to the petitioner on 21.05.2024,

followed by two reminders viz., 24.06.2024 and 01.08.2024. However, the petitioner had not responded to any of the above notices / intimation and thus the impugned order came to be passed. It is submitted by the learned counsel for the petitioner that neither the show cause notices nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded under "view additional notices and orders" tab of the GST Portal, thereby, the petitioner was unaware of the initiated proceedings. 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 Government Advocate 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 09.08.2024 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.

30.01.2025

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

To:

Assistant Commissioner (ST)
Poonamallee Assessment Circle,
Station 4/109, Third Floor,
Bangalore Chennai Highway,
Varadarajapuram, Nazarathpet,
Chennai 600 123.

MOHAMMED SHAFFIQ, J.

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