IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.1186 of 2025
and
WMP.Nos.1423 & 1424 of 2025

Flyman Logistics
Represented by its partner
Mr.Kaliyappan Sanjay
New No.3, 4th Street,
Thillaiganga Nagar,
Nanganallur, Chennai – 600 061. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Velacherry Assessment Circle,
No.571, Integrated Commercial Taxes and Registration,
Department (South Tower),
Room no.225, 2nd Floor, Anna Salai,
Nandanam, Chennai – 600 035. ... 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 relating to an impugned order dated 16.08.2024 vide Reference No.ZD330824129220S in Form GST DRC-07 bearing GSTIN: 333AAEFF0114A1ZJ pertaining to FY 2019-20 issued by the respondent as arbitrary and illegal and quash the same and further direct the respondent to redo the adjudication in accordance with law after granting opportunity of personal hearing to the petitioner.

For Petitioner ... Ms.Mitra B

For Respondent ... Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 16.08.2024 relating to the assessment year 2019-20 on the limited ground that it is made in violation of principle of natural justice.

2.It is submitted by the learned counsel for the petitioner that the petitioner is engaged in logistics business and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2019-20, the petitioner filed its returns and paid the appropriate taxes. While so, a show cause notice was issued on the premise that there was a mismatch between GSTR 3B and GSTR-2A.

3. It is submitted by the learned counsel for the petitioner that a show cause notice was issued in DRC-01 to the petitioner on 21.05.2024, to which, the petitioner filed its reply on 13.07.2024, wherein, the petitioner sought for time to furnish the requisite documents. Thereafter, reminders were issued on 08.07.2024 & on 07.08.2024. Further, a personal hearing was issued on 07.08.2024. However, the petitioner had failed to appear nor avail the opportunity for a personal hearing and had not submitted requisite documents. In view thereof, the impugned order came to be passed, confirming the proposal. It is 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,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes.

5. It was further submitted that the petitioner is ready and willing to pay 25% 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 16.08.2024 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.

Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

sms

21.01.2025

To

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MOHAMMED SHAFFIQ, J.

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