IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.1961 of 2025
and
W.M.P.Nos.2296 and 2298 of 2025

Tvl.AGS Mall
Represented by its partner: Mr.A.Gnanasekar
3/33 AGS Mall Shopping Complex,
Chinnakulam, Mariamman Koil Street,
Thirupattur 635 601. ... Petitioner

Vs.

Commercial Tax Officer,
Jurisdiction: Thirupattur,
Thirupattur: Vellore: Tamil Nadu,
Thirupattur – Tamil Nadu ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus and call for the records on the file of the respondent passed in order u/s 73 passed in GSTIN:33AAUFA0984D1ZG and Form GST DRC-07 having Reference No.ZD330524028566E and dated 06.05.2024 for the tax period April 2019-March 2020 relating to Financial Year 2019-20 and quash the same as illegal contrary to the provisions of the TNGST/CGST Acts and in violation of principles of natural justice and fair play and direct the respondent to reverse the suo moto debiting of the Electronic Credit Ledger of the petitioner.

For Petitioner	:	Mr.T.Pramod Kumar Chopda, Senior Advocate for Mr.T.C.Gopalakrishnan
For Respondent	:	Mr.C.Harsha Raj, Additional Government Pleader.

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 06.05.2024 relating to the assessment year 2019-20.

2. The petitioner is engaged in the business of providing boarding and lodging services and is registered under the Goods and Services Tax Act, 2017. During the relevant period viz., 2019-20, the petitioner filed its returns and paid the appropriate taxes. On scrutiny of the petitioner's return, it was found that there was an alleged mismatch between GSTR-3B and GSTR-2A.

2.1.Pursuant thereto, a notice in ASMT -10 was issued on 31.03.2022, followed by DRC-01A on 26.05.2022 and DRC-01 on 07.08.2023. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing, Hence, the impugned order came to be passed, confirming the proposal.

3. The impugned order is challenged on the premise 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 in the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings.

4. It is submitted by the learned counsel for the petitioner that subsequent to the impugned order dated 06.05.2024, an intimation in DRC-01 was issued on 31.05.2024, raising certain other issues related to GSTR-2A and GSTR-3B. However, the subsequent notice had ended up in dropping of the proposal vide form GST DRC-05 dated 11.09.2024. The learned counsel for the petitioner would submit that subsequent to the impugned order, more than 12% of the tax due, in terms of the impugned order, has been recovered. That apart, during the course of the subsequent proceedings culminating in DRC-05 dated 11.09.2024, the petitioner had also remitted additional sums which if added to the 12% already recovered, would be more than 25% of the disputed taxes in terms of the impugned order dated 06.05.2024.

5. 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. The learned counsel for the petitioner would then 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. It was further submitted that subsequent to the passing of the impugned order, the petitioner had remitted more than 25% of the disputed taxes 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 Additional Government Pleader 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 06.05.2024 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.

27.01.2025

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

Commercial Tax Officer,
Jurisdiction: Thirupattur,
Thirupattur: Vellore: Tamil Nadu,
Thirupattur – Tamil Nadu

MOHAMMED SHAFFIQ, J.

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(2/2)