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.2038 of 2025
and
W.M.P. Nos.2378 and 2379 of 2025

Tvl.S.K.H.Agencies,
Rep. By its Proprietor Krishnan Hariharan,
11, Gnanmbal Garden Second Street,
Ayanavaram, Chennai-600 023. ... Petitioner

Vs.

The Deputy State Tax Officer-II,
Purasawakkam Assessment Circle,
F-50, First Floor, First Avenue,
Anna Nagar (East), Chennai-600 102. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the Respondent in his order in Proc.No./33AAAPH4687A1Z6/2020-21, dated 24.01.2023 and summary order in Reference No:ZD3301230867777 in Form GST DRC-07 dated 24.01.2023 and quash the same as illegal.

For Petitioner : Mr.P.R.Kumar

For Respondent : Mr.TNC.Kaushik
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 24.01.2023 on the ground of violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the manufacture of paper cups and paper napkins and is registered under the Goods and Services Tax Act, 2017 (hereinafter referred to as "the Act"). During the relevant period 2020-21, the petitioner filed its returns and paid the appropriate taxes. However, during the scrutiny of the petitioner's monthly return, it was found that there was a mismatch between GSTR 1 and GSTR 3B.

3. Pursuant thereto, a show cause notice in DRC-01 was issued on 20.10.2023, to which the petitioner filed its reply on 09.10.2024. However, the impugned order came to be passed confirming the proposal. It is submitted by the learned counsel for the petitioner that the impugned order proceeds on the premise that there is a mismatch between GSTR 1 and GSTR 3B and proceeds to invoke Section 75(12) of the Act, that the tax that is sought to be demanded is self-assessed tax. It is the case of the petitioner that it is not self-assessed tax. It

is thus 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 discrepancy.

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 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 24.01.2023 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 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
mka
To:
The Deputy State Tax Officer-II,
Purasawakkam Assessment Circle,

F-50, First Floor, First Avenue,
Anna Nagar (East), Chennai-600 102.

MOHAMMED SHAFFIQ, J.

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