IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.1468 of 2025 and
W.M.P.Nos.1717 to 1719 of 2025

Tvl.Sri Pragya Enterprises,
Represented by its Proprietrix, Sandhya,
Ground Floor, No.9, Leelavathy Nagar,
Gerugambakkam, Kancheepuram,
Tamil Nadu 600 128
GSTN NO. 33DBRPS6179B1Z8. ....Petitioner

Versus

1. The Deputy State/Commercial Tax Officer-I,
Kundrathur Assessment Circle,
Integrated Commercial Taxes Building,
No.4/109, Chennai Bangalore Highways,
Varadharajapuram, Nazarthpet,
Poonamallee 600 123.

2. Indian Overseas Bank,
Represented by its Branch Manger,
No.9, Dr.Natesan Road, Ashok Nagar,

Chennai 600 083. .... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, to call for the records of the 1st Respondent order dated 16.04.2024 issued by the 1st Respondent in GSTIN :33DBRPS6179B1Z8/2018-19 Vide DRC 07 Reference No:ZD330424126303X and to quash the same, as it has been passed in violation of principles of natural justice.

For Petitioner : Mr.Poojesh
For R1 : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order dated 16.04.2024 passed by the first respondent relating to the financial year 2018-2019.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in Service Provider business of Works Contract Services and Transport of Goods by road and is registered under the Goods and Service Tax Act, 2017. During the relevant period 2018-19, the petitioner had filed its return and paid appropriate taxes. However, on examination of the information furnished by the

petitioner in GSTR-01, GSTR-2A, GSTR-3B and other records, it was noticed that there was excess claim of Input Tax Credit, inasmuch as the petitioner had claimed credit in respect of non-business transactions.

3. It is further submitted by the learned counsel for the petitioner that subsequently, a show cause notice in Form DRC-01 dated 27.12.2023 was issued to the petitioner, to which, the petitioner had submitted its reply on 10.04.2024. However, the respondent/assessing authority, finding that the petitioner's reply is not acceptable for want of document, passed the order dated 16.04.2024, confirming the proposal. The said order of the respondent/assessing authority is under challenge in this Writ Petition. It is also 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 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.

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 first respondent does not have any serious objection.

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

a) The impugned order dated 16.04.2024 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.

23.01.2025

Speaking (or) Non Speaking Order
Neutral Citation: Yes/No
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MOHAMMED SHAFFIQ, J.

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To
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