IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.1600 of 2025
and
W.M.P.Nos.1821 and 1823 of 2025

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

Vs.

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

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the 1st respondent order dated 23.08.2024 issued by the respondent in GSTIN:33DBRPS6179B1Z8/2019-20, vide DRC 07 Reference No: ZD330824210720S and to quash the same.

For Petitioner : Ms.J.Poojesh

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 23.08.2024, passed by the respondent in GSTIN:33DBRPS6179B1Z8/2019-20.

2. It is submitted by the learned counsel for the petitioner that the petitioner is running a Service Provider Business of Works Contract Services and Transport of Goods by Road and is registered under the GST Act. During the relevant period of 2019-20, the petitioner has filed the returns and paid appropriate taxes. However, on scrutiny of the returns submitted by the petitioner, the following defects were noticed:

(i)Reconciliation of GSTR -01 with GSTR 3B.

(ii)Input Tax Credit to be reversed on non business transactions and exempt supplies.

(iii)Under declaration of Ineligible Input Tax Credit.

3. It is submitted by the learned counsel for the petitioner that an

intimation in DRC 01 was issued to the petitioner on 21.05.2024. In response, the petitioner filed its reply dated 29.05.2023 with respect to the discrepancy Under Declaration of Ineligible ITC which was found to have merits and the defect was dropped. However the other two defects viz., Reconciliation of GSTR 01 with GSTR 3B and Input Tax Credit to be reversed on non business transactions and exempt supplies was confirmed vide impugned order dated 23.08.2024. It is further 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 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 he 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 23.08.2024 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 of 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
spp

To:

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

MOHAMMED SHAFFIQ, J.

spp

W.P. No.1600 of 2025
and
W.M.P.Nos.1821 and 1823 of 2025

27.01.2025