IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.2839 of 2025
and
W.M.P.Nos.3145 and 3146 of 2025

M/s.Sunrich Logistics Private Limited,
Represented by its Branch Manager,
Mr.K.Purusothaman,
No.28, Hatimi Manzil, Office No.2, I Floor,
Mooker Nallamuthu Street,
Chennai 600 001. .. Petitioner

Vs.

1. The Deputy Commissioner (ST),
GST Appeal, Chennai - I,
Room No.230, C.T.Buildings,
2nd Floor, Chennai 600 006.

2. The State Tax Officer,
Broadway Assessment Circle,
Room No.305, 3rd Floor,
Integrated Commercial Taxes Complex,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai 600 003. .. Respondents

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 in the orders passed by the 2nd respondent in

GSTIN/33AANCS8154P1ZK/2017-18 dated 28.11.2023 and 2nd respondent in Summary of the order in DRC-07 in Ref.No.ZD331123177089F dated 28.11.2023 and the records of the 1st respondent in Form-GST-APL-2 dated 15.10.2024 in Ref.No.ZD331024098591G, in which the appeal filed by the petitioner was rejected and quash the same and direct the 1st respondent to entertain the appeal without any reference to the period of limitation and dispose of it on merits and in accordance with law.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.T.N.C.Kaushik
Additional Government Pleader

ORDER

The present writ petition has been filed challenging the impugned order passed by the respondent in GSTIN/33AANCS8154P1ZK/2017-18 dated 28.11.2023, passed by the 2nd respondent and the consequential appeal rejection order passed by the 1st respondent dated 15.10.2024 on the premise that the same is made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner company is a Licensed Customs House Agent providing

Clearing and Forwarding Service and Management Service and is registered under the GST Act. During the relevant period of 2017-18, the petitioner had filed the returns and paid appropriate taxes. However, on scrutiny of the returns it was *inter alia* noticed that excess Input Tax Credit was claimed over and above that of the tax paid under reverse charge mechanism.

3. It is submitted by the learned Counsel for the petitioner that an intimation in Form DRC 01 was issued to the petitioner on 12.09.2023. Personal hearing notice was also issued to the petitioner dated 27.09.2023. However, the petitioner neither filed any reply nor avail the opportunity of personal hearing. Hence the impugned order came to be passed. Aggrieved by the impugned order, the petitioner had filed an appeal along with 10% pre-deposit, which was however rejected on the ground of being barred by limitation. It is submitted by the learned counsel for the petitioner that neither the show cause notice 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 "View Additional Notices / Orders" column GST Portal, thereby, the petitioner

was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings.

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. 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. It is also submitted that subsequent to the passing of the impugned order, the petitioner had filed an appeal along with 10% pre-deposit and would request that the same may be adjusted towards 25% of the disputed tax, to which, the learned Additional Government Pleader appearing for the respondent does not have any serious objection.

5. By consent of both parties, the writ petition stands disposed of on the following terms:

a) The impugned orders are 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.

6. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

29.01.2025

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

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MOHAMMED SHAFFIQ, J.

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