IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2025

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.1761 of 2025
and W.M.P.Nos.2008 & 2009 of 2025

Tvl. Arjuna Sarees and Readymades,
Represented by its Proprietor Mr.Gopala Krishnan,
No.193/174, Erode Road,
Perundurai 638 052. ... Petitioner

Vs.

1. Assistant Commissioner (ST)(FAC)
(also known as Commercial Tax Officer),
Perundurai Assessment Circle,
Perundurai.
2. The State Tax Officer,
(also known as Sales Tax Officer)
Perundurai Circle, Perundurai. ...Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records on the files of the 1st Respondent herein in his proceeding in GSTIN:33AZVPG8246L1ZP/2017-18 dated 15.06.2023, along with the accompanying FORM GST DRC-07 with Reference No.

ZD330723064052R dated 17.07.2023 for the tax period Jul 2017 -Mar 2018 and quash the same.

For Petitioner : Mr.K.A.Parthasarathy
For Respondent : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order dated 15.06.2023 and the consequential summary of the order in FORM GST DRC-07 dated 17.07.2023 passed by the first respondent relating to the assessment year 2017-18.

2. The petitioner is *inter alia* involved in the business of trading of sarees and other readymades and is registered under Goods and Services Act, 2017. During the relevant period 2017-18, the petitioner had filed its return and paid the appropriate taxes. However, on verification of the records, the following discrepancies were noticed:

(i) Mismatch between GSTR-3B and GSTR-1

(ii)Non-compliance of turnover reported in GSTR-1, GSTR-9 and IT return.

3. Pursuant thereto, an intimation notice in Form DRC-01A dated

12.01.2023 and 19.01.2023 followed by a show cause notice in Form DRC-01 dated 06.02.2023 was issued to the petitioner through GST common portal. Further, personal hearing opportunity was also afforded to the petitioner. However, the petitioner had neither filed its reply nor availed the opportunity for personal hearing. Hence, the impugned order came to be passed by the first respondent, confirming its proposals.

4. The learned counsel for the petitioner would further submit that notices and orders were uploaded under the "Additional Notices and Orders" tab on the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and thus unable to participate in the adjudication proceedings. 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.

5. 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***. 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 respondents does not have any serious objection.

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

a) The impugned order dated 15.06.2023 and the consequential summary of the order dated 17.07.2023 are set aside.

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondents, 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 from 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 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 to be paid for compliance of the direction of 25% of the disputed taxes after deducting the sums already paid and payment by the petitioner of the balance amount 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 first 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

Index : Yes / No
Internet : Yes/ No
jd

To

1. Assistant Commissioner (ST)(FAC)
(also known as Commercial Tax Officer),
Perundurai Assessment Circle,
Perundurai.
2. The State Tax Officer,
(also known as Sales Tax Officer)
Perundurai Circle, Perundurai.

MOHAMMED SHAFFIQ, J.

jd

W.P.No.1761 of 2025

23.01.2025