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.1732 of 2025 and
W.M.P.Nos.1982 &1983 of 2025

Future Consumer Limited,
Represented by its Chief Finance Officer
Rajendra Bajaj,
Abirami Avenue, 1/2, 14th Street,
Kannadasan Nagar, Chennai 600 118. ....Petitioner

Versus

State Tax Officer,
Kodungaiyur Assessment Circle,
Room No. 203, 2nd Floor, No.32,
Integrated Commercial Taxes Office Complex,
Elephant Gate Bridge Road, Chennai 600 003. .... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, to call for the impugned order of the respondent passed in GSTN:33AABCS0279B1ZV/18-19 dated 27.04.2024 and quash the same.

For Petitioner : Mr.R.Kumar
For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 27.04.2024 passed by the respondent relating to the financial year 2018-19.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a dealer in retail business of consumer products 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. While so, there was an audit conducted at the business place of the petitioner under Section 65 of the Act. During the course of audit, the following defects were *interalia* noticed.

(i) Short tax liability

(ii) Credit note issued

(iii) Exempted sales

(iv) ITC on Tran

(v) Deemed supply

(vi) Adjustment in turnover due to reason not listed

(vii) ITC availed for previous financial year

3. It is submitted by the learned counsel for the petitioner that a show cause notice in Form DRC-01 dated 31.01.2024, followed by reminder/personal hearing notice dated 13.03.2024 were issued to the petitioner through common portal. However, the petitioner had neither filed its reply nor availed the opportunity for personal hearing. Hence, the impugned order came to be passed confirming its proposals. 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 impugned order is challenged on the premise that neither the show cause notices nor the impugned order of assessment has been served by tendering to the petitioner or by registered post, instead it was uploaded in the common portal under the head "View Additional Notices and Orders" tab, thereby, the petitioner was unaware of the initiated proceedings and thus unable to participate in the adjudication proceedings.

5. 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.

6. 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.

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

a) The impugned order dated 27.04.2024 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.

8. 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
State Tax Officer,
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