IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.1952 of 2025
and
W.M.P.Nos.2258 and 2259 of 2025

Enrich Engineering,
Rep by its Partner B.Gandhi
Plot No.30, Melrosapuram Road,
Ganapathy Syndicate Colony,
Sengundram,
Kancheepuram District 603 204. ... Petitioner

Vs.

1.The State Tax Officer,
Chengalpattu Assessment Circle,
No.16A, 1st Floor, 1st Main Road,
Anna Nagar,
Chengalpattu 603 001.

2.The Deputy Commissioner (ST),
Chengalpattu Zone,
No.26, 2nd Floor, Abirami Complex,
Mahalakshmi Nagar, Thimmavaram,
Nandanam,
Chengalpattu 603 001.

3.The Branch Manager,
Indian Overseas Bank,
AC56, 5th Avenue,
Annanagar West,
Chennai 600 040. ... 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 of the first respondent in GSTIN:33AAEFE3217H1ZW/2019-20 along with impugned order in DRC-07 in Ref.ZD330824137688Y dated 14.08.2024, consequential Bank Attachment in GSTIN:33AAEFE3217H1ZW along with DRC-13 dated 22.11.2024 issued by the second respondent and quash the same as per law laid down by this Court in the case of Saravanaa Projects and Co., Vs The Assistant Commissioner (ST) in W.P.No.7752 of 2024 dated 22.03.2024 and further direct the second respondent to defreeze the bank account with the third respondent.

For Petitioner	: Mr.P.Arumugam
For Respondents	: Mr.V.Prashanth, Government Advocate for R1 and R2.

ORDER

The present writ petition is filed challenging the impugned order dated 14.08.2024 on the short ground that the impugned order does not deal with the objection filed by the petitioner and thus suffers from non-application of mind.

2. The petitioner is engaged in the business of fabricating containers and

machine parts and is registered under the Goods and Services Tax Act, 2017. During the relevant period viz., 2019-20, the petitioner filed its returns and paid the appropriate taxes. However, on verification of the petitioner's return, the following discrepancies were noticed viz.,

i. Mismatch between GSTR-01 and GSTR-09

ii. Excess Claim of Input Tax Credit which is alleged on the basis of mismatch between GSTR 2A and GSTR-09.

iii. Input Tax Credit claimed from the dealers whose registration certificates have been cancelled on the premise that they are fictitious.

2.1. Pursuant thereto, a Show Cause Notice in Form DRC-01 was issued on 22.05.2024, followed by reminders on 26.06.2024 and 06.07.2024. Personal hearing was offered on 16.07.2024. In response to the Show Cause Notice, the petitioner had filed its replies on 21.06.2024, 01.07.2024 and 10.07.2024, wherein it has been stated that insofar as the mismatch between GSTR-01 and GSTR-09 which resulted in a tax liability of Rs.1,697/- under the CGST and SGST Act respectively, the petitioner is ready and willing to pay the same. Insofar as the Excess Claim of Input Tax Credit is concerned, it is submitted by the learned counsel for the petitioner that in their reply, they had provided a statement indicating that the Input Tax Credit entitled under SGST, CGST and IGST works out to Rs.1,730,526/-, Rs.1,730,526/- and

Rs.78,744/- respectively, contrary to the amounts found in the Show Cause Notice viz., Rs.488,679/-, Rs.488,679/- and Rs.78254/- under SGST, CGST and IGST respectively. However, the impugned order does not deal with the above replies but merely reiterates the proposal. It is thus submitted that the impugned order suffers from non-application of mind to the objections.

3. Insofar as the third issue is concerned viz., the ITC claimed from dealers whose registration certificate has been cancelled, it is submitted by the learned counsel for the petitioner that, in their replies, they had given the details of invoices and also the proof of having paid taxes in respect of supplies effected from M/s.Sri Vaari Infra.

4. At the outset, the learned counsel for the petitioner would seek one final opportunity to go before the assessing authority to put forth their objections to the proposal and is willing to pay 10% of the disputed taxes. It is submitted that there is bank attachment and the same may be lifted to which the learned Government Advocate appearing for the respondents 1 and 2 does not have any serious objections.

5. Though this Court has normally been referring to 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, where it has been ordering remand of the matter on payment of 25% of the disputed taxes, in view of the fact that the third issue suffers from violation of principles of natural justice and also in view of the peculiar facts of the case, this Court is inclined to direct the petitioner to pay 10% of the disputed taxes.

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

a) The impugned order dated 14.08.2024 is set aside.

b) The petitioner shall deposit 10% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondents 1 and 2, 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 10% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 10% 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 10% 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 10% 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 10 % 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., 10% 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.

28.01.2025

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

MOHAMMED SHAFFIQ, J.

shk

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