IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.2101 of 2025
and
W.M.P.Nos.2468 and 2470 of 2025

Tvl.Mas Enterprises
Rep. by its Partner,
Mr.Ravi Shankar,
Plot No.523-525, Bhagyam Street,
Golden George Nagar, Nerkundrum,
Chennai 600 107. .. Petitioner

Vs.

The Assistant Commissioner (ST),
No.353, 3rd Street,
Integrated Commercial Taxes Building,
Nandanam, Chennai 600 035.
.. 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 in the files of respondent herein in proceedings GSTIN:33ABHFM7285M1ZO/2018-19 dated 29.04.2024 along with Form GST DRC-07 vide Ref.No.ZD330424241604P dated 29.04.2024 and consequential recovery notice bearing RC.No.33ABHFM7285M1ZO/2024-25 dated 11.11.2024 and quash the same.

For Petitioner : Mr.P.Arumugam
for Mr.S.Muthuvenkataraman

For Respondents : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 29.04.2024, passed by the respondent in GSTIN:33ABHFM7285M1ZO/2018-19 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 is a registered dealer under the GST Act. During the relevant period of 2018-19, the petitioner has filed the returns and paid appropriate taxes. However, on scrutiny of the returns submitted by the petitioner certain discrepancies were *inter alia* noticed viz.,

i) Excess claim of Input Tax Credit.

ii) Under declaration of Ineligible Input Tax Credit.

3. It is submitted by the learned counsel for the petitioner that a notice in DRC-01 was issued to the petitioner on 27.12.2023 followed by two reminders viz., 08.03.2024 and 13.04.2024. However, the petitioner

had not responded to any of the above notices / intimation and the impugned order came to be passed. It is submitted by the learned counsel for the petitioner that neither the show cause notices 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 notice and Orders" tab in the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. It is 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 discrepancy.

4. 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,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes. It is further submitted by the learned counsel for the petitioner that pursuant to the impugned order, the petitioner's bank account, as mentioned in the prayer has been

attached and the same may be lifted/withdrawn.

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 29.04.2024 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 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.

24.01.2025

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

To:

The Assistant Commissioner (ST),
No.353, 3rd Street,
Integrated Commercial Taxes Building,
Nandanam, Chennai 600 035.

<u>MOHAMMED SHAFFIQ, J.</u>

spp

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<u>and</u>
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