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.2065 of 2025
and
W.M.P.Nos.2419 and 2422 of 2025

Tvl.Bhartia Pulverisers,
Rep. by its Partner,
Mr.Jagdamba Prasad Chaturbhuji Bhartia,
No.11/2 Part B2, Sipcot Industrial Park,
Gummidipoondi, Thervoykandigai,
Chennai Tamil Nadu 601 202. .. Petitioner

Vs.

Assistant Commissioner (ST),
Gummidipoondi Assessment Circle,
Integrated Building for Commercial Taxes Department,
Chennai North Division, Room No.112, 1st Floor,
Elephant Gate Bridge Road, Chennai 600 003.
.. 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 of the respondent in Order dated 08.05.2023 in GSTN:33AABFB5975E1ZN/2018-19 for the financial year 2018-2019 and quash the same.

For Petitioner : Mr.Pranav Jain

For Respondents : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 08.05.2023, passed by the respondent in GSTN:33AABFB5975E1ZN/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 dealer in Iron Steel raw materials and is registered 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 return, it was *inter alia* found that there was a discrepancy viz., mismatch between GSTR 3B and GSTR 2A.

3. It is submitted by the learned counsel for the petitioner that a notice in DRC-01A was issued on 06.07.2022 followed by a notice in Form DRC 01 on 29.11.2022. Thereafter, a reminder notice was also issued to the petitioner vide notice dated 20.12.2022. 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 also submitted by the learned counsel for the petitioner that pursuant to the passing of impugned order 15% of the disputed taxes has been debited by means of electronic cash ledger. 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.

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. It is also submitted that subsequent to the passing of the impugned order, 15% of the disputed taxes has already been debited by means of electronic cash ledger and would request that the same may be adjusted towards 25% of the disputed tax, 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 08.05.2023 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 debited from electronic cash ledger 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:

Assistant Commissioner (ST),
Gummidipoondi Assessment Circle,
Integrated Building for Commercial Taxes Department,
Chennai North Division, Room No.112, 1st Floor,
Elephant Gate Bridge Road, Chennai 600 003.

MOHAMMED SHAFFIQ, J.

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