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.2486 of 2025
and
W.M.P.Nos.2799 & 2801 of 2025

Tvl.Klariti Opticals,
Represented by its Partner,
Dr.N.Kasinathan,
115, Lakshmanasamy Salai,
K.K.Nagar,
Chennai 600 078. ... Petitioner

Vs.

The Assistant Commissioner (ST)(FAC),
K.K.Nagar Assessment Circle,
Greams Road, Annex Building,
Chennai 600 006. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned proceedings of the respondent in GSTIN:33AAUFK5129J1ZY/2019-20 dated 19.08.2024 and the connected order under section 73 dated 19.08.2024 and the summary of the order in Form GST DRC-07 dated 19.08.2024 issued in Reference No:ZD3308241532787 and quash the same as passed contrary to the provisions of the Central Goods and Service Tax Act, 2017 read with the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 and also passed in contrary to the principles of natural justice.

For Petitioner : Mr.C.Sivasubramanian
For respondent : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 19.08.2024 passed by the respondent relating to the assessment year 2019-20.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the retail and wholesale of high-quality optical products including prescription eyewear, sunglasses, contact lenses and vision care accessories etc., and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2019-20, the petitioner had filed its returns and paid the appropriate taxes. However, on verification of the returns filed by the petitioner, it was noticed that there was a mismatch between GSTR-2A and GSTR-3B.

3. It is submitted by the learned counsel for the petitioner that, a notice in Form DRC-01 dated 30.05.2024 was issued to the petitioner through common portal, followed by reminder notices thereon and personal hearing opportunity was also granted to the petitioner. However, the petitioner had neither filed its

reply nor availed an opportunity of personal hearing. Hence, the impugned order came to be passed by the respondent, confirming the proposals.

4. The learned counsel for the petitioner would further submit that notices and orders were uploaded in 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,*** 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,

which was not objected to by the learned Special Government Pleader for the respondent.

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

a) The impugned order dated 19.08.2024 is set aside.

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the 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/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.

28.01.2025

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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To
The Assistant Commissioner (ST)(FAC),
K.K.Nagar Assessment Circle,
Greams Road, Annex Building,
Chennai 600 006.

MOHAMMED SHAFFIQ, J.

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