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.2489 of 2025
and
W.M.P.Nos.2808 & 2809 of 2025

Sakthi Starch Co.,
Represented by its Managing Partner,
Mohan Babu,
4/494-A, Kandapa Colony,
Annadhanapatti,
Salem 636 002. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Annathanapatty Assessment Circle,
Station:Integrated Commercial Tax Building,
Fourth Floor, Pitchards Road,
Hasthampatty, Salem 636 007. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the Respondent herein in GSTIN/33ABLFS3431R1ZO/2017-18 in FORM GST DRC-07 in Order Reference No.ZD331223294604 dated 31.12.2023 and quash the same.

For Petitioner : Ms.K.Siri Chandana

For respondent : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present writ petition is filed challenging the impugned order 31.12.2023 passed by the respondent relating to the assessment year 2017-2018.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business in Starches, Inulin Starches and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2017-2018, the petitioner had filed its returns and paid the appropriate taxes. However, on verification of the returns filed by the petitioner, it was found that there was mismatch between GSTR-1 and GSTR-3B.

3. It is submitted by the learned counsel for the petitioner that a show cause notice in Form DRC-01 dated 22.09.2023 were issued to the petitioner through GST common portal. The petitioner had submitted its reply vide letter dated 18.10.2023. However, it was found that the documentary evidence in the form of Ledger extract has not been filed. Thus, the impugned order came to be passed by the respondent, confirming the proposals. It is 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 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 they may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal. It is further submitted that there is bank attachment and the same may be lifted, to which, the learned Special Government Pleader 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 31.12.2023 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 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) 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.

g) In view of the above order, the attachment made on the petitioner's Bank account shall be lifted /withdrawn on complying with the above condition viz., payment of 25 % of the disputed taxes.

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
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MOHAMMED SHAFFIQ, J.

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To
The Assistant Commissioner (ST),
Annathanapatty Assessment Circle,
Station:Integrated Commercial Tax Building,
Fourth Floor, Pitchards Road,
Hasthampatty, Salem 636 007.

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