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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.2491 of 2025
and
W.M.P.Nos.2810 & 2812 of 2025

Sakthi Cables,
Represented by its Partner Mr.A.Sivasubramani,
No.1, Multi Industrial Area,
Kundrathur Road, Gerugambakkam,
Chennai 600 122, Tamil Nadu. ... Petitioner

Vs.

Commercial Tax Officer/Assistant Commissioner(ST)(FAC),
Kundrathur Assessment Circle,
4/109, Bangalore Chennai Highway,
Varadarajapuram, Nazarathpet, Chennai-600 123. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in the file of the Respondent and quash the Impugned Order under section 73 of the Tamil Nadu Goods and Service Tax Act, 2017/Central Goods and Service Tax Act, 2017 including the Summary of the Order in Form GST DRC-07 both dated 22.08.2024 and having Reference Number ZD3308241938117 and its annexure dated 22.08.2024 in Reference Number-33ACBFS3372G1ZB/2019-20 having

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GSTIN-33ACBFS3372G1ZB passed by the Respondent for the FY 2019-20.

For Petitioner	: Mr.K.Subash Anbarasu for Mr.N.V.Balaji
For Respondent	: Mrs.K.Vasanthamala Government Advocate

ORDER

The present writ petition is filed challenging the impugned orders dated 22.08.2024 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 a partnership firm engaged in the business of manufacturing Aluminium Bar rods and electrical Transformers, Static Converters and Inductors 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 examination of the information furnished by the petitioner in GSTR-3B, GSTR-01, GSTR-2A, EWB and other records, the following discrepancies were noticed:

(i) Mismatch between GSTR-07 and GSTR-01

(ii) Excess claim of ITC

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3. Pursuant thereto, a show cause notice in Form DRC-01 dated 23.05.2024 was issued to the petitioner through GST common portal. Further, personal hearing opportunity was also granted to the petitioner on 08.07.2024 and 16.07.2024 respectively, and reminder notices thereon. However, the petitioner had neither filed its reply nor availed of opportunity for personal hearing and thus, the impugned order came to be passed by the respondent, confirming the proposals.

4. 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 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, 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

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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, to which the learned Government Advocate appearing for the respondent does not have any serious objection.

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

a) The impugned orders dated 22.08.2024 are 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

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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

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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
jd

To
Commercial Tax Officer/Assistant Commissioner(ST)(FAC),
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MOHAMMED SHAFFIQ, J.
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