IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.2556 of 2025
and
W.M.P. Nos.2873 and 2874 of 2025

M/s.AKM Beverages and Manikandan Contractor,
Represented by its Proprietor Mr.M.Manikandan,
S.F.No.204/4, Katharikuppam Village,
Via Mukundarayapuram – 632 405,
Walaja Taluk, Ranipet District. ... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Ranipet SIPCOT Assessment Circle,
No.25, Ground Floor, Government Buildings,
Ward-B, Combined Commercial Taxes Complex,
Railway Station Road, Opp. To Ulzhavar Chandai,
Ranipet-632 401.

2.The State Tax Officer, Review Cell,
O/o. The Joint Commissioner (ST)(Intelligence),
Vellore Division, No.4, Bharathiyar Salai,
Fort Round Road, Vellore-632 001.

3.The State Tax Officer,
O/o. The Deputy Commissioner (ST) (Inspection),
Commercial Taxes Building, Collectorate Complex,
Trichy Main Road, Villupuram-605 602,
Camp at No.4, Barathiyar Salai,
Fort Round Road, Vellore-632 001. ... Respondents

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 order passed by the 2nd Respondent dated 27.12.2023 in GSTIN/33BFQPM1264J1Z8/2021-22 and the summary of the order dated 27.12.2023 issued by the 2nd Respondent in Ref.No.ZD331223227951N, set aside and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mrs.K.Vasanthamala
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 27.12.2023 relating to the assessment year 2021-22.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the supply of beverages and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2021-22, the petitioner filed its returns and paid the appropriate taxes. There was an inspection of the petitioner's place of business on 21.04.2023, during the course of such inspection, it was found that there was a mismatch between GSTR 2A and GSTR 3B.

3. Pursuant thereto, a notice in DRC-01A was issued on 26.07.2023 and

another notice in DRC-01 was issued on 08.09.2023 followed by three reminder notices dated 31.10.2023, 22.11.2023 and 18.12.2023. However, the petitioner had not responded to any of the above notices / intimation, the impugned order was thus passed confirming the proposal. 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 under "view additional notices/ orders" tab on 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.

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, 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 27.12.2023 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) 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.

29.01.2025

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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MOHAMMED SHAFFIQ, J.

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