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.2508 of 2025
and
W.M.P. Nos.2830 and 2831 of 2025

Tvl Malaiyaan Integrated Builders,
Rep. by its Proprietor - Arumugam,
1st Floor, 39/ Al, Valliammai Street,
Urapakkam, Chengalpattu Taluk,
Kancheepuram 603 210. ... Petitioner

Vs.

The Assistant Commissioner (ST) (FAC),
Office of the Commercial Tax Officer,
Maraimalainagar Assessment Circle,
4/109, Second floor,
Bangalore Chennai Highway,
Varadarajapuram, Nazarathapet,
Chennai 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 on the files of the impugned proceedings of the Respondent vide GSTIN.33ABAFM5719R1ZU/2018-2019 dated 23.04.2024 along with consequential order in Form GST DRC-07 bearing a Ref No.ZD330424171751J dated 23.04.2024 for the tax period 2018-19, quash the same and further direct the Respondent to enable the Petitioner to rectify human error in the details uploaded in Form GSTR-1, for the tax period 2018-19.

For Petitioner : Mr.K.Vignesh Kumar

For Respondent : Mr.T.N.C.Kaushik
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 23.04.2024 and also the consequential summary of the order in Form DRC-07 dated 23.04.2024 passed by the respondent relating to the assessment year 2018-19.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the construction business and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2018-19, the petitioner 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-1 and GSTR-3B.

3. Pursuant thereto, a show cause notice in Form DRC-01 dated 29.01.2024 was issued to the petitioner through GST common portal and

thereafter personal hearing opportunity was also granted to the petitioner on 09.02.2024. However, the petitioner had neither filed its reply nor availed the opportunity for personal hearing and thus the impugned order came to be passed confirming the proposal. 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 then 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 Additional 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 orders dated 23.04.2024 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 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.

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),
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MOHAMMED SHAFFIQ, J.

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