IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.3103 of 2025
and
WMP.Nos.3403 & 3404 of 2025

Tvl Roshan Technologies
Represented by its Proprietor
Mr.Mahendra Kumar
No.131, 1st Floor, RKP Plaza,
100 Feet Road, Gandhipuram,
Coimbatore – 641 012. ... Petitioner

Vs.

The State Tax Officer/Commercial Tax Officer
Gandhipuram Circle,
Dr.Balasundaram Road,
Coimbatore – 641 018. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari to call for records of the impugned order passed in GSTIN 33CFWPM1061G1ZD/2019-20 dated 23.08.2024 on the file of the respondent herein along with the consequential DRC-07 order under Section 73 Ref No.ZD330824211905F dated 23.08.2024 on the file of the respondent herein and quash the same.

For Petitioner ... Mr.Poojesh. J

For Respondent ... Mrs.K.Vasanthamala
Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 23.08.2024 relating to the assessment year 2019-20.

2. The petitioner is engaged in the business of wholesale and retail of computer peripherals viz., laptop scree, panel, adapters etc., and accessories such as cords, wires and other accessories. The petitioner is a registered under the Tamil Nadu Goods & Services Tax Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. However, on verification of the returns, it was noticed that there was a mismatch between GSTR -01 and GSTR -09, under declaration of ineligible input tax credit under Section 17(5) of the SGST Act, 2017 and interest due to late payment of GSTR-3B.

2.1. Pursuant thereto, a show cause notice was issued to the petitioner on 22.05.2024 and reminders on 19.07.2024 and 23.07.2024. Further, personal hearing was offered to the petitioner on 22.06.2024, 22.07.2024 and 02.08.2024. However, the petitioner had neither filed its reply nor paid the appropriate taxes. Hence, the impugned order came to be passed, confirming the proposal.

3. It is submitted by the learned counsel for the petitioner that neither the show cause notice 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 further 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***. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that he 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. It is further submitted that more than 25% of the disputed tax has already been paid and would request that the same may be adjusted towards 25% of the disputed taxes.

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

a) The impugned order dated 23.08.2024 is set aside.

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

6. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

30.01.2025

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
sms

To

The State Tax Officer/Commercial Tax Officer
Gandhipuram Circle,
Dr.Balasundaram Road,
Coimbatore – 641 018.

MOHAMMED SHAFFIQ, J.

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