IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.2557 of 2025
and
WMP.Nos.2875 & 2876 of 2025

Jothi Virutchem Super Market
Represented by its Partner R.Karthikeyan
Old No.132, New No.222, MG Road,
Villupuram – 605 602. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Villupuram I Assessment Circle,
Puducherry Road, Villupuram – 605 602. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari calling for the records on the file of the Respondent in its proceedings made in GSTIN: 33AAPFJ0879F1Z6/2019-20 dated 23.05.2024 and the connected order in Form GST DRC-07 bearing Ref.No.ZD330524199936T dated 23.05.2024 and quash the same as illegal, arbitrary.

For Petitioner ... Mr.Prasanna Kumar J

For Respondent ... Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 23.05.2024 relating to the assessment year 2019-20.

2. The petitioner is engaged in the business of Groceries, Provisions and General Goods and is registered under Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. However, during the scrutiny of the petitioner's monthly return, the following defects were noticed:

i).mismatch between GSTR 3B and GSTR 2A

ii).E-way bill was not generated for the inward supplies contravention to the section 68 and rule 138 of TNGST/CGST Act 2017.

2.1. Pursuant thereto, an intimation in GST ASMT-10 was issued on 26.03.2022, followed by a notice in DRC-01A on 13.05.2022. A show notice was issued in DRC 01 to the petitioner on 31.05.2022 and reminders on 06.01.2023 and 09.08.2023. The petitioner filed its reply on 22.08.2022 in response. The impugned order came to be passed on the premise that the petitioner had filed only reply but not supported by materials or invoices and thus the Respondent authority proceeded to confirm 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.

3. 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 Pleader appearing for the respondent does not have any serious objection.

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

a) The impugned order dated 23.05.2024 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.

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

Speaking (or) Non Speaking Order
Index : Yes/ No **28.01.2025**
Neutral Citation: Yes/No
sms

Note: Issue order copy on 31.01.2025

To

The Assistant Commissioner (ST),
Villupuram I Assessment Circle,
Puducherry Road, Villupuram – 605 602.

MOHAMMED SHAFFIQ, J.

sms

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