IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.3131 of 2025
and
WMP.Nos.3444 & 3445 of 2025

Neutron Electrical Engineers
Rep.by its Partner
Abdul Rajack Shahul Hameed
7/2, Shamma Buildings,
Head Quarters Road,
Coimbatore, Tamil Nadu – 641 018. ... Petitioner

Vs.

1.The Deputy Commissioner (ST) (FAC),
Goods and Service Tax Appeal,
Coimbatore, Commercial Taxes Building,
Coimbatore.

2.The Assistant Commissioner, (ST),
Avinashi Road, Assessment Circle,
Coimbatore. ... 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 respect of the impugned order dated 07.11.2023 made in GSTIN:33AADFN9723G 1ZB/2017-2018 on the file of the 2nd respondent herein quash the same.

For Petitioner	:	Mr.ANR Jayaprathap for Mr.V.Rajesh
For Respondents	:	Mr.V.Prashanth Kiran Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 07.11.2023 relating to the assessment year 2017-18.

2.The petitioner is engaged in the business of sale, supply of electrical and electronic control panels from 1997 and is registered under TNGST Act. During the relevant period 2017-18, the petitioner filed its returns and paid the appropriate taxes. During the course of scrutiny, it was noticed that there was a mismatch between GSTR-3B and GSTR-2/2B.

3.Pursuant thereto, a notice in GST DRC 01A was issued to the petitioner on 23.09.2023 and another notice in GST DRC 01 was issued on 29.09.2023 and reminder was issued on 27.10.2023. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. 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.

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 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. It is further submitted that subsequent to the passing of the impugned order, an appeal was also preferred and payment of 10% of disputed tax was made as pre-deposit and the same was rejected on the ground that it was filed beyond the statutory period of limitation and his only request is that the same may be adjusted towards 25% of the disputed tax and pursuant to the impugned order of assessment, recovery proceedings were initiated and bank accounts have been attached and requests that the same may be lifted, 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 07.11.2023 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 petition is closed.

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

30.01.2025

To

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MOHAMMED SHAFFIQ, J.

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