IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.3087 of 2025
and
W.M.P. Nos.3378 and 3383 of 2025

M/s.AKM Beverages and Manikandan Contractor,
Represented by its Proprietor Ms.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, Barathiyar Salai, Fort Round Road,
Vellore- 632 001.

3. The State Tax Officer, (Inspection 1),
O/o the Deputy Commissioner (ST) (Inspection),
Commercial Taxes Building, Collectorate Complex,
Trichy Main Road,
Villupuram- 605602.
Camp at No. 4, Barathiyar Salai,
ort 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, call for the records in the order passed by the 2nd Respondent dated 27-12-2023 in GSTIN/33BFQPM1264J1Z8/2017-18, the Summary of the order dated 27-12-2023 in Ref No ZD331223226452W and the Rectified Summary of the order dated 27.12.2023 issued by the 2nd Respondent in Ref No.ZD331223227297L 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 orders dated 27.12.2023 passed by the respondent relating to the assessment year 2017-18.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of supplying goods namely natural, artificial, mineral and aerated waters and other non-alcoholic beverages etc., and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2017-18, the petitioner filed its returns and paid the appropriate taxes. While so, there was an inspection conducted at the petitioner place of business. During the course of inspection, it was noticed that there was a mismatch between GSTR-2A and GSTR-3B.

3. Pursuant thereto, an intimation notice in Form DRC-01A dated 25.07.2023, followed by a show cause notice in Form DRC-01 dated 08.09.2023 were issued to the petitioner through common portal. Further, personal hearing was also afforded to the petitioner. However, the petitioner had neither filed its reply nor availed of opportunity for personal hearing, the impugned order was thus 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 impugned order is challenged on the premise that neither the show cause notices nor the impugned order of assessment has been served by

tendering to the petitioner or by registered post, instead it was uploaded in the common portal under the head “View Additional Notices and Orders” tab, thereby, the petitioner was unaware of the initiated proceedings and thus unable to participate in the adjudication proceedings.

5. 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.

6. 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.

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

a) The impugned orders dated 27.12.2023 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.

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

31.01.2025

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

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