IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.10824 of 2022
and
W.M.P.Nos.10455 and 10456 of 2022

M/s.Fairy Land Foundations Pvt. Ltd.,
Rep. by its Director, S.Saravanan,
No.24, Varadharajapuram,
Kubera Nagar, Velachery Inner Ring Road,
Velachery, Chennai 600 042. .. Petitioner(s)

Vs.

The Assistant Commissioner, (Circle)
Office of the Assistant Commissioner,
Velachery Assessment Circle,
Nandanam, Chennai 600 035. .. Respondent(s)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the respondent in his proceeding in GSTIN/ID:33AAACF8818Q1Z5 (Reference No.ZA3303200009719) and quash the impugned proceedings dated 13.03.2020.

For Petitioner(s) : Mr.B.Raveendran

For Respondents(s) : Mr.C.Harsha Raj
Special Government Pleader

ORDER

The writ petition is filed challenging the order dated 13.03.2020 on the limited ground that the detailed order along with Form GST DRC 07 has not been served.

2. It is submitted by the learned counsel for the petitioner that the petitioner 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. However, on scrutiny it was noticed that there was excess claim of Input Tax Credit.

3. Pursuant thereto, two notices were issued to the petitioner on 15.03.2019 and 15.04.2019. In response the petitioner filed its detailed reply dated 25.04.2019. However, the respondent did not consider the reply dated 25.04.2019 and passed the impugned order confirming the proposal. Subsequent to the passing of impugned order, recovery proceeding was also initiated. 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 discrepancy.

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 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. It is also the case of the petitioner that subsequent to the impugned order, the petitioner had remitted 25% of the disputed taxes and his only request is that the same may be adjusted towards 25% of the disputed tax., to which the learned Special 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 order dated 13.03.2020 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 petitions are closed.

08.04.2025

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

To:

The Assistant Commissioner, (Circle)
Office of the Assistant Commissioner,
Velachery Assessment Circle,
Nandanam, Chennai 600 035.

MOHAMMED SHAFFIQ, J.

spp

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