IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.35839 of 2024
and
WMP.No.38702 of 2024

M/s.Monk Story,
Represented by its authorized Partner
Mr.Nilesh Jain
No.14 A, Branson Garden Street,
Chennai, Tamil Nadu – 600 010.
GSTIN: 33ABCFM0633Q1Z7 ... Petitioner

Vs.

The Assistant Commissioner (ST)
Ayanavaram Assessment Circle,
F-50, 3rd Floor, 1st Avenue,
Anna Nagar East, Chennai-600 102. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorarified Mandamus, calling for the record of the impugned order in Ref.No.ZD330424016542U, dated 02.04.2024, under Section 73 Tamil Nadu Central Goods and Service Tax Act, 2017, for the assessment period 2018-2019 uploaded along with the summary of the order in form GST DRC-07 from the file of the Respondent herein, quash the same and direct the respondent to pass a fresh order after providing an opportunity of being heard to the petitioner.

For Petitioner ... Mr.Sanjay Rajpurohit

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

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 02.04.2024 relating to the assessment year 2018-19.

2.The petitioner is engaged in the business of oftrading and suppliers of bags, footwear and leather goods accessories. The petitioner is a registered dealer under Goods and Services Act, 2017. During the relevant period, the petitioner had filed its monthly returns in Form GSTR 3B and GSTR1 in Ayanavaram Assessment Circle, the following discrepancy was noticed:

i). Excess input tax credit availed as compared to RCM

2.1.Pursuant thereto, a show notice was issued in DRC 01 to the petitioner on 09.10.2023. Further, personal hearing was offered on 17.01.2024 and 25.03.2024. Rreminders on 10.01.2024 and 23.03.2024. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. 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.

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

a) The impugned order dated 02.04.20214 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 petition is closed.

Speaking (or) Non Speaking Order
Index : Yes/ No **22.01.2025**
Neutral Citation: Yes/No
sms

To

The Assistant Commissioner (ST)
Ayanavaram Assessment Circle,
F-50, 3rd Floor, 1st Avenue,
Anna Nagar East, Chennai-600 102.

MOHAMMED SHAFFIQ, J.

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