IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.35935 of 2024
and
W.M.P. Nos.38816 and 38819 of 2024

Tvl.S.S.Enterprises Electricals,
Rep. By its Proprietor Mr.Amutha Selvaraju,
Ground-207, Prakasam Street,
Janaki Nagar, Valasaravakkam,
Chennai-600 087. ... Petitioner

Vs.

The State Tax Officer-1,
Office of the Joint Commissioner (ST),
Chengalpattu Intelligence,
No.870/2A, 1st Floor, Kanchipuram High Road,
Thimmavaram Post, Chengalpattu-603 101. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the impugned assessment order dated 19.07.2024 bearing GSTIN No.33AGRPA3240P1ZA/2021-2022 passed by the respondent, quash both as arbitrary.

For Petitioner : Mr.Abdul Rahman

For Respondent : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 19.07.2024 relating to the assessment year 2021-22.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in works contract and supply of electrical transformers and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2021-22, the petitioner filed its returns and paid the appropriate taxes. On the basis of authorisation issued by the Joint Commissioner, the petitioner's place of business was inspected on 20.04.2023. After verification of records furnished by the petitioner and the returns in GSTR 2A, GSTR 3B and GSTR 9, the following discrepancies were noticed:

Revenue Abstract 2021-22:-

Sl.No.	Particulars	Turnover	Tax				Penalty				Interest				Total
			IGST	CGST	SGST	CESS	IGST	CGST	SGST	CESS	IGST	CGST	SGST	CESS	
1	Supplies to SEZs without payment of tax reported in GSTR-9	1052955	0	94766	94766	0	0	94766	94766	0	0	38369	38369	0	455801
2	Difference between ITC Table 8A and 8B in GSTR 9	0	0	290586	290586	0	0	290586	290586	0	0	117652	117652	0	1397647
3	Difference in ITC as per Table 6J for the year 2021-22	0	0	23428	23428	0	0	23428	23428	0	0	9485	9485	0	112683
4	Blocked Credit u/s 17(5)	0	0	5142	5142	0	0	5142	5142	0	0	2082	2082	0	24732
5	Cancellation of E-way bills	450000	0	40500	40500	0	0	40500	40500	0	0	16398	16398	0	194795
	Total		0	**454422**	**454422**	0	0	**454422**	**454422**	0	0	**183985**	**183985**	0	**2185658**

3. It is submitted by the learned counsel for the petitioner that a notice in DRC-01A was issued on 14.09.2023 and another notice in DRC-01 was issued on 27.12.2023 followed by reminders dated 12.02.2024, 22.02.2024 and 10.04.2024, however, the petitioner had neither filed reply nor paid the disputed tax. 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 under the "view additional notices and orders" tab on 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 **Sree Manoj International Vs. Deputy State Tax Officer in W.P.No.10977 of 2024 dated 25.04.2024**, to submit that this court has remanded the matter back in similar circumstances subject to payment of 10% of the disputed taxes.

5. It was further submitted that the petitioner is ready and willing to pay 10% 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.

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

a) The impugned order dated 19.07.2024 is set aside.

b) The petitioner shall deposit 10% 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 10% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 10 % 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 10% 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 10% 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 10 % 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., 10% 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.

06.01.2025

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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To:
The State Tax Officer-1,
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MOHAMMED SHAFFIQ, J.

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