IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2025

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P. No.36170 & 36174 of 2024
and W.M.P. Nos.39055, 39056, 39059 & 39061 of 2024

M/s.S.M. Builders
Rep., by its Partner P.Theivam,
No.06-1, Nadu Street,
Kondalampatty,
Salem 636 010. ... Petitioner in both W.P's

Vs.

The State Tax Officer,
Office of the Assistant Commissioner (ST),
Suramangalam Assessment Circle,
Salem. ...Respondents in both W.P's

PRAYER in W.P.No.36170 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari to call for the records of the respondent in ARN/Case ID No.AD330224018158G/Order.Ref. No.ZD330924094062E for the assessment year 2018-19 impugned proceeding dated 10.09.2024 passed therein along with rectification order in ARN / Case Id:AD330924021292D/Rect. Order Ref. No.ZD330924096526Y, dated 13.09.2024 and quash the same.

PRAYER in W.P.No.36174 of 2024 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the respondent in ARN:AD3306240422 974/Order Ref. No.ZD330924155993X for the assessment year 2019-20 and quash the proceeding dated 23.09.2024 passed therein.

Appearance in both W.P's

For Petitioner : Mr.B.Raveendran

For Respondent : Ms.Amrita Dinakaran
Government Advocate

COMMON ORDER

Since the issue involved and the relief sought in both these Writ Petitions are identical in nature, the same were heard together and disposed of vide this common order.

2. These Writ Petitions are filed challenging the impugned orders dated 10.09.2024 & 23.09.2024 passed by the respondent, on the ground of violation of principles of natural justice.

3. It is submitted by the learned counsel for the petitioner that the petitioner is a civil works contractor doing civil construction work to M/s.Reliance and Co., and is registered under the Goods and Service Tax Act, 2017. While so, there was an audit conducted at the business place of the petitioner under Section 65 of the Act. During the course of audit, certain discrepancies were noticed and audit slips were issued followed by a show cause notice in Form DRC-01 and personal hearing was afforded to the petitioner. The petitioner has challenged the said show cause notice in Form DRC-01 before this Court in W.P.No.7326 of 2024, on the premise that there is a reasonable apprehension of bias by the officer who had issued the impugned communications. This Court was pleased to dispose of the above Writ Petition after recording that the file has been transferred to different officers thus the above apprehension of bias stood allayed.

4. Pursuant thereto, the Officers had directed the petitioner to furnish the following documents:

(i) The detail of the vehicle which has delivered the goods

(ii) Payment proof of goods and freight charges

(iii) Acknowledgment of taking delivery of goods

(iv) E-way bill details (Goods moved from the supplier to the tax

payer registered place and goods moved from tax payers registered place to work site)

(v) Toll gate RFID details with vehicle number

(vi) Invoice wise weighbridge bill or receipt.

5. The learned counsel for the petitioner would further submit that the entire set of documents were furnished along with certain statements. However, the impugned order proceeds on the basis that the documents were not produced.

6. Ms.Amrita Dinakaran, learned Government Advocate appearing for the respondent would further submit that the petitioner's objections were rejected on the premise that the documents were inadequate. Hence, the impugned order came to be passed, confirming the proposals.

7. It is then 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. The learned counsel for the petitioner would then 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 tax demand.

8. It is also submitted by the learned counsel for the petitioner that subsequent to the passing of the impugned order, more than Rs.50 lakhs has already been recovered from the petitioner and the same may be taken into account while reckoning 10% of the disputed tax amount, which was not objected to by the learned Government Advocate.

9. By consent of parties, these writ petitions stands disposed of on the following terms:

a) The orders impugned herein are 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.

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

08.01.2025

Index : Yes / No
Internet : Yes/ No
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To
The State Tax Officer,
Office of the Assistant Commissioner (ST),
Suramangalam Assessment Circle,
Salem.

MOHAMMED SHAFFIQ, J.

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W.P. No.36170 & 36174 of 2024

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