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.27 of 2025
and W.M.P.Nos.32 & 33 of 2025

Finevo Solutions
Represented by its Proprietor,
Sankar Saranya,
Plot No.70A, Vasanthapuram Main
Road, Chennai, Kancheepuram,
Tamil Nadu 600 122. ... Petitioner

Vs.

The Deputy State Tax Officer – II,
Koyambedu Assessment Circle,
Station: No.4/109, 1st Floor,
Bangalore Chennai Highway,
Varadharajapuram, Nazrethpetai,
Chennai 600 123. ...Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in GSTIN / 33CDXPS8813B1Z6/2020-21 in FORM GST DRC – 07 proceedings in Order Reference No.ZD331123163055W dated 27.11.2023 and quash the same.

For Petitioner : Ms.K.Siri Chandana
For Respondent : Mr.G.Nanmaran,
Special Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 27.11.2023 passed by the respondent relating to the assessment year 2020-21.

2. Mr.G.Nanmaran, learned Special Government Pleader, takes notice on behalf of the respondent. By consent of the parties, the main Writ Petition is taken up for disposal at the admission stage.

3. The petitioner is a service provider of financial consultancy services, rental services of other transport vehicles. The petitioner is registered under Goods and Services Act, 2017. During the relevant period 2020-21, the petitioner had filed its return and paid the appropriate taxes. However, on perusal of the records, it was noticed that the petitioner had availed ITC which is covered under Section 17(5) of the Act as blocked credit.

3.1. It is submitted by the learned counsel for the petitioner that, a show cause notice in Form DRC-01 dated 16.10.2023 was issued to the petitioner through GST Portal, followed by an opportunity of personal hearing on 18.10.2023. However, the petitioner had neither filed its reply nor availed an opportunity of personal hearing. Hence, the impugned order came to be passed, confirming the proposals. Aggrieved by the said order, the petitioner had preferred an appeal on 02.09.2024 before the Appellate Authority and the same was dismissed on 18.10.2024 on the premise it is barred by limitation. Further, he would submit that the petitioner had already remitted 10% of the disputed tax as pre-deposit for filing an appeal.

4. The learned counsel for the petitioner would further submit that notices and orders were uploaded under the "Additional Notices and Orders" tab on the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and thus unable to participate in the adjudication proceedings. It is also 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.

5. 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 Special Government Pleader appearing for the respondent does not have any serious objection.

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

a) The impugned order dated 27.11.2023 is set aside.

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondents, 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 from 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 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 to be paid for compliance of the direction of 25% of the disputed taxes after deducting the sums already paid and payment by the petitioner of the balance amount 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 first 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.

06.01.2025

Index : Yes / No
Internet : Yes/ No
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To

The Deputy State Tax Officer – II,
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Station: No.4/109, 1st Floor,
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Varadharajapuram, Nazrethpetai,
Chennai 600 123.

MOHAMMED SHAFFIQ, J.

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