IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2025

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.38086 of 2024
and W.M.P.Nos.41205 & 41207 of 2024

M/s.Project Management Solution, Chennai
Represented by its Partner
Mr.Sachin Mehta
No.187, Yamuna Apartments
Habibullah Road, T.Nagar
Chennai 600 017. ... Petitioner

Vs.

The Assistant Commissioner of GST and Central Excise
Triplicane Division: Chennai North
26/1, 6th Floor (Annex Building), Utthamar Gandhi Road,
Nungambakkam, Chennai 600 034. ...Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in Order-in-Original No.26/2023-24 GST(AC) passed under Section 73 of the CGST Act, 2017 for the period 2017-2018 to 2021-2022 dated 20.12.2023 and quash the same as illegal and not in accordance with law and consequently direct the respondent to conduct fresh assessment proceedings after providing a reasonable opportunity of hearing to the petitioner in accordance with law.

For Petitioner	:	Mr.Gautham Venkata Narayanan for Mr.Sivaraman
For Respondent	:	Mr.K.S.Ramaswamy, Senior Panel Counsel

ORDER

The present writ petition is filed challenging the impugned order dated 20.12.2023 passed by the respondent relating to the financial year 2017-2018 to 2021-2022.

2. Mr.K.S.Ramaswamy, learned Senior Panel Counsel 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 itself.

3. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the field of supply of repair and maintenance services, manpower services and general construction services and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2017-18 to 2021-22, the petitioner filed its returns and paid the appropriate taxes. While

so, the officers of the Audit Commissionerate, Chennai conducted audit of the GST record of the petitioner for the period July 2017 to March 2022 and during the course of audit, the following discrepancies were noticed:

(i) Excess availment of Input Tax Credit (differential amount between GSTR-3B and GST-2A)

(ii) Ineligible ITC availed on invoices reflected in GSTR-2A but liabilities discharged by the counter party (suppliers) by filing their GSTR 3B-ITC availed on supplies on which tax not paid to the Government.

(iii) Non-payment Interest on late payment of tax of Rs.2,49,91,175/-.

(iv) Non-payment of GST on taxable supply wrongly declared as exempted supply

4. It is submitted by the learned counsel for the petitioner that, a show cause notice dated 19.09.2023 was issued to the petitioner, followed by which, personal hearing opportunities were granted to the petitioner on 26.10.2023, 02.11.2023 and 09.11.2023. However, the petitioner had neither paid the tax nor availed the opportunities of personal hearing. 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 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 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,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes.

6. 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, to which the learned Senior Panel Counsel appearing for the respondent does not have any serious objection.

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

a) The impugned order dated 20.12.2023 is set aside.

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the 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.

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

02.01.2025

Index : Yes / No
Internet : Yes/ No
jd

MOHAMMED SHAFFIQ, J.
jd

To

The Assistant Commissioner of GST and Central Excise
Triplicane Division: Chennai North
26/1, 6th Floor (Annex Building), Utthamar Gandhi Road,
Nungambakkam, Chennai 600 034.

W.P.No.38086 of 2024

02.01.2025