IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.37304 of 2024
and
W.M.P.Nos.40318 and 40319 of 2025

M/s.Graced Enterprises,
Rep. by its Partner,
Charles Elango John,
Shop No.1, 2, Door No.255,
Plot 89-90, Thirukazhukundram Road,
Melamaiyur Village, Chengalpattu 603 003. ..Petitioner

Vs.

The State Tax Officer,
Chengalpattu Assessment Circle,
Station No.16A, 1st Floor,
1st Main Road, Anna Nagar,
Chengalpattu 603 001. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, thereby call for the impugned order dated 24.04.2024 in Order No.GSTIN:33AALFG7703P1ZZ/2018-19 issued by the respondent and quash the same.

For Petitioner : Mr.S.Prabakaran

For Respondents : Mr.Prashanth Kiran
Government Advocate

ORDER

The present writ petition has been filed challenging the impugned order dated 24.04.2024, passed by the respondent in Order No.GSTIN:33AALFG7703P1ZZ/2018-19, on the premise that the same is made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of whole sale and retail trading Groceries, Rice, Water, Chocolate,etc., and is registered under the GST Act. During the relevant period of 2018-19, the petitioner has filed the returns and paid appropriate taxes. However, on scrutiny of returns the following discrepancies were noticed:

i) Mismatch between GSTR 3B and GSTR 2A.

ii) Interest and penalty levied under Section 73 of TNGST Act, 2017.

3. It is submitted by the learned counsel for the petitioner that a notice in ASMT 10 was issued to the petitioner on 05.10.2023, followed by a notice in DRC 01 dated 13.01.2024. Thereafter, three reminders viz.,

02.03.2024, 16.03.2024 and 04.04.2024 were also issued to the petitioner. However, the petitioner had not responded to any of the above notices / intimation, the impugned order was thus passed confirming the proposal. 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 impugned order of assessment. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, he would be able to explain the alleged discrepancy.

4. The learned counsel for the petitioner would then 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.

5. 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.

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

a) The impugned order dated 24.04.2024 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.

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

21.01.2025

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
spp

To:

The State Tax Officer,
Chengalpattu Assessment Circle,
Station No.16A, 1st Floor,
1st Main Road, Anna Nagar,
Chengalpattu 603 001.

MOHAMMED SHAFFIQ, J.

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