IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.39074 of 2024
and
W.M.P.Nos.42326 and 42327 of 2024

Sighamani Sivakumar,
Proprietor of Shree Vinayaga Trading Company,
188/1, Thadagam Road, Sivaji Colony,
Coimbatore, Tamil Nadu 641 025.
..Petitioner

Vs.

Commercial Tax Officer,
Velandipalayam,
Coimbatore. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent leading to the issuance of impugned order dated 11.09.2023 vide GSTIN:33AZAPS3191B2ZO/2022-23 and quash the same and consequently direct the respondents to re-adjudicate the show cause notice after giving an opportunity of personal hearing and shall pass a fresh speaking order in accordance with law.

For Petitioner : Mr.A.G.Sathyanarayana

For Respondent : Mrs.Vasanthamala
Government Advocate

ORDER

The present writ petition has been filed challenging the impugned order passed by the respondent in GSTIN:33AZAPS3191B2ZO/2022-23 dated 11.09.2023, passed by the respondent 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 wholesale trade of waste and scrap of precious metal and is registered under the GST Act. During the relevant period of 2022-23, the petitioner had filed the returns and paid appropriate taxes. However, on verification of returns it was found that the petitioner had availed Input Tax Credit in respect of supplies made / received from a non existing / fictitious entity viz., M.M.Traders.

3. It is submitted by the learned Counsel for the petitioner that an intimation in Form DRC 01A was issued on 12.07.2023, followed by a

notice in DRC01 dated 01.08.2023. An opportunity of personal hearing was also granted to the petitioner on 08.08.2023. However, the petitioner neither filed any reply nor avail the opportunity of personal hearing. Hence the impugned order came to be passed. Aggrieved by the impugned order, the petitioner had filed an appeal along with 10% pre-deposit, which was however rejected on the ground of being barred by limitation. 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 "Additional Notices" tab in the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings.

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. 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. It is also submitted that subsequent to the passing of the impugned order, the petitioner had filed an appeal along with 10% pre-deposit and would request that the same may be adjusted towards 25% of the disputed tax, to which, the learned Government Advocate appearing for the respondent does not have any serious objection.

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

a) The impugned order dated 11.09.2023 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 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.

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

03.01.2025

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

To:

Commercial Tax Officer,
Velandipalayam,
Coimbatore.

MOHAMMED SHAFFIQ, J.

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