IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.38499 of 2024
and
W.M.P. Nos.41705, 41707 and 41708 of 2024

Kadar Mohideen Kotharsha
Prop. M/s.Sha Steel Traders
(GSTIN.33AQVPK1321P1ZH),
No.2, Ground Floor,
Manali Expressway,
Chennai, Tamil Nadu 600 019. ...Petitioner

Vs.

1. The Assistant Commissioner (ST),
Muthialpet Assessment Circle,
Integrated Commercial Tax Offices Complex,
No.32, Elephant Gate Bridge Road,
Chennai – 600 003.

2. The Branch Manager,
City Union Bank Ltd.,
Royapuram Branch,
No.104, 150, M.S.Koil Street,

Royapuram,
Chennai – 600 013. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the records in impugned proceeding in Reference No.ZD331223201468S, dated 26.12.2023 on the file of the 1st respondent herein and quash the same.

For Petitioner : Mr.B. Manoharan
For R1 : Mr.C. Harsha Raj
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 26.12.2023 passed by the first respondent relating to the assessment year 2019-20.

2. Mr.C.Harsha Raj, learned Additional Government Pleader takes notice on behalf of the first respondent. By consent of the parties, the main Writ Petition is taken up for disposal at the admission stage.

3. The petitioner is a sole proprietorship concern and engaged in steel business and is registered under the Goods and Service Tax Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. While

so, on the basis of field inspection report received from Intelligence-I, Chennai, the place of business of Tvl. Reliable Steels (GSTIN 33KXJPS5848Q1Z7) was verified, it was found that the tax payer is a non-existent business entity and thus the Input Tax Credit availed by the petitioner on the basis of the invoices of the said Tvl.Reliable Steels was sought to be reversed.

3.1. Pursuant thereto, an intimation notice in Form GST DRC-01A and a show cause notice in Form GST DRC-01 were issued to the petitioner on 05.10.2023 and 23.11.2023 respectively along with detailed notice through GST Portal, and thereafter, an opportunity of personal hearing was also granted to the petitioner. 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.

4. The learned counsel for the petitioner would further submit that notices and orders were uploaded in 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 Additional Government Pleader appearing for the first 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 26.12.2023 is set aside.

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

02.01.2025

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

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2. The Branch Manager,
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MOHAMMED SHAFFIQ, J.

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