**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 02.01.2025**

**CORAM**

**THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.P.No.37960 of 2024 and**
**W.M.P.No.41041 & 41043 of 2024**

Tvl.Rajagopalan Subash
Represented by its Proprietor Rajagopalan Subash,
5/9, Poniamman Koil Street, Puzhuthivakkam,
Kancheepuram, Tamil Nadu-600 091. ...Petitioner

Vs.

1. The State Tax Officer, Group IV, Inspection,
Chengalpattu Intelligence Division,
Station No.870/2A,1st Floor, Kancheepuram High Road,
Thimmavaram, Chengalpattu 603 101.

2. The Appellate Deputy Commissioner (ST) (GST)
Chennai-II
PAPJM Building, Greams Road,
Chennai 600 006. ...Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the records relating to the impugned order bearing GSTIN 33AMYPS2557E1ZL /2020-21 dated 27.01.2024 passed by the first Respondent and quash the same as the same being arbitrary, passed in violation of the principles of natural justice.

For Petitioner : Mr.M.S.Sanjay Nikaash
For Respondents : Mr.V.Prashanth Kiran
Government Advocate

**ORDER**

The present Writ Petition is filed challenging the impugned order dated 27.01.2024 passed by the first respondent relating to the assessment year 2020-21, on the ground of violation of principles of natural justice.

2. Mr.V.Prashanth Kiran, learned Government Advocate takes notice on behalf of the respondents. By consent of the parties, the main Writ Petition is taken up for disposal at the admission stage.

3. The petitioner is a proprietorship concern engaged in the business of works contract, operates under GSTIN 33AMYPS2557E1ZL and is registered under the Tamil Nadu SGST Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. While so, there was an inspection of the business place of the petitioner on 24.03.2023 in terms of Section 67(2) of the Act. During the course of such inspection, after verifying the records furnished by the taxable person and the data available in the website, Trading account, balance

sheet, profit and loss account, GSTR Form-9 and GSTR-9C, the following discrepancies were noticed:

**(i) Rental Income not reported**

**(ii) Excess ITC availed when compared GSTR-3B and GSTR-2A**

**(iii) Ineligible ITC under Section 17(5)**

**(iv) Interest for the TDS turnover relates to the month of July 2020 to September 2020 reported in the month of October 2020**

**(v) Interest for belated payment of tax**

3.1. Subsequently, summons were issued to the petitioner, followed by an intimation notice in Form GST DRC-01A dated 19.09.2023 and a show cause notice in Form GST DRC-01 dated 25.10.2023 were issued to the petitioner through GST Portal, and thereafter, an opportunity of personal hearing was also granted to the petitioner on 05.01.2024. 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 18.06.2024 before the second respondent/Appellate Authority and the same was dismissed on 05.11.2024 on the premise it is bared 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 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 Government Advocate appearing for the respondents 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 27.01.2024 is set aside.

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

**02.01.2025**

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

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Station No.870/2A,1st Floor, Kancheepuram High Road,
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2. The Appellate Deputy Commissioner (ST) (GST)
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**MOHAMMED SHAFFIQ, J.**

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