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.38382 of 2024
and
W.M.P. Nos.41561 and 41563 of 2024

Hadeed Steel,
Rep. by its Partners,
Mohamed Mussamil,
No.96, Thirumurugan Nagar,
Alapakkam Main Road,
Maduravoyal,
Chennai – 600 116. ...Petitioner

Vs.

State Tax Officer,
Porur Assessment Circle,
Station No.4/109, Ist Floor,
Bangalore Highway Road,
Varadharajapuram,
Nazaratpet, Chennai – 600 123. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, to call for the records comprised in pursuant to the impugned order dated 26.04.2023 in continuation with impugned rectification order dated 23.05.2023 for the assessment period 2020-2021 for the GSTIN:33AALFH2584HIZA/2020-21 on the file of the respondent and quash the same and direct the respondent to pass fresh orders in accordance with law.

For Petitioner : Mr. A.Vijayakannan
For Respondent : Mr.G. Nanmaran
Special Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned orders dated 26.04.2023 and 23.05.2023 for the assessment year 2020-21, whereby the interest which was wrongly calculated was rectified and a sum of Rs.6,17,450/- was demanded. The above orders of assessment and rectification is under challenge, on the ground of violation of principles of natural justice.

2. Mr.G.Nanmaran, learned Special Government Pleader 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.

3. The petitioner is engaged in the business of purchasing the steel and resale the same and is registered under the Goods and Service Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. While so, there was a scrutiny of returns under Sections 61 and 74 of the Act. During the course of such scrutiny, it was noticed that the petitioner had availed Input Tax Credit on the strength of the invoices issued by a non-existent persons. The petitioner where thus requested to produce the following documents in support of the claim of ITC namely:

i) Original Tax invoices & e-way bill copies

ii) Copy of the Purchase Register

iii) Copy of the Lorry Receipt

iv) Proof of the payment

3.1. Subsequently, an intimation notice in Form GST DRC-01A and a show cause notice in Form DRC-01 were issued to the petitioner on 11.11.2022 and 23.12.2022 respectively through GST Portal, and thereafter, an opportunity of personal hearing was also granted to the petitioner on 15.02.2023. 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. Thereafter, it was noticed by the respondent that the interest was wrongly calculated and entered and rectification order was passed vide proceedings dated 23.05.2023, levying interest of Rs.6,17,450.

4. The learned counsel for the petitioner would further submit that notices and orders were uploaded under the "additional notices" tab on 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 Special Government Pleader appearing for the respondent does not have any serious objection.

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

a) The orders impugned herein are 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.

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
State Tax Officer,
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MOHAMMED SHAFFIQ, J.

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