IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.38644 and 38648 of 2024
and
W.M.P.Nos.41849, 41851, 41852, 41854, 41855 and 41857 of 2024

W.P.No.38644 of 2024:

Tvl.Sai Ram Packaging,
Represented by its proprietor Mr.Samartharam,
No.152/1, Sundarampillai Nagar, 2nd Street,
Tondiarpet, Chennai 600 081.

..Petitioner

Vs.

1. The Assistant Commissioner (ST),
Tondiarpet Assessment Circle,
Integrated Commercial Taxes Department,
No.32, Elephant Gate Bridge Road,
Chennai 600 003.

2. The Deputy State Tax Officer (ST) 1 /
Deputy Commercial Tax Officer,
Tondiarpet Assessment Circle,
Integrated Commercial Taxes Building, 2nd Floor,
Elephant Gate Bridge Road, Chennai 600 003.

3. The Branch Manager,
Kotak Mahindra Bank Limited,
First Floor, No.280, Old No.377,

Mint Street, Sowcarpet,
Chennai 600 079. .. Respondents

W.P.No.38648 of 2024

Tvl.Sai Ram Packaging,
Represented by its proprietor Mr.Samartharam,
No.152/1, Sundarampillai Nagar, 2nd Street,
Tondiarpet, Chennai 600 081.

..Petitioner

Vs.

1. The Deputy State Tax Officer (ST) 1 /
Deputy Commercial Tax Officer,
Tondiarpet Assessment Circle,
Integrated Commercial Taxes Building, 2nd Floor,
Elephant Gate Bridge Road, Chennai 600 003.

2. The Assistant Commissioner (ST),
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3. The Branch Manager,
Kotak Mahindra Bank Limited,
First Floor, No.280, Old No.377,
Mint Street, Sowcarpet,
Chennai 600 079. .. Respondents

PRAYER in W.P.No.38644 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the impugned order passed in GSTIN:33AAXHS5967H2Z9/2018-19 dated 07.03.2024 on the file of the 1st respondent herein along with the consequential DRC-07 order under Section 73, Ref.No.ZD3303240368795 dated 07.03.2024 on the file of the 1st respondent herein and quash the same.

PRAYER in W.P.No.38648 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the impugned order passed in GSTIN:33AAXHS5967H2Z9/2018-19 dated 30.01.2024 on the file of the 1st respondent herein along with the consequential DRC-07 order under Section 73, Ref.No.ZD330124144563R dated 30.01.2024 on the file of the 1st respondent herein and quash the same.

For Petitioner in both W.P.'s : Mr.J.Poojesh

For Respondents in both W.P.'s : Mr.G.Nanmaran Special Government Pleader

COMMON ORDER

These writ petitions are filed challenging the impugned orders dated 30.01.2024 and 07.03.2024. It is submitted by both the learned counsel for the petitioner as well as the respondent that the impugned order dated 30.01.2024, may no longer survive, inasmuch as all the issues covered in 30.01.2024 were reconsidered and fresh orders were passed vide impugned order dated 07.03.2024. In view thereof, the challenge to the impugned order dated 30.01.2024 in W.P.No.38648 of 2024, may not survive for all practical purposes.

2. Insofar as, the impugned order dated 07.03.2024, it is submitted by the learned counsel for the petitioner that the petitioner is running a

Wholesale and Retail Business of Cartons, Boxes and Articles 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 filed by the petitioner the following discrepancies were noticed :

(i) Excess Input Tax Credit (ITC) claimed on account of non-reconciliation of information.

(ii) Input Tax Credit claimed from cancelled dealers, return defaulters and tax non payers.

3. It is submitted by the learned counsel for the petitioner that originally, when the order was passed on 30.01.2024 the excess claim of Input Tax was arrived at Rs.7,16,018/-. However, vide impugned proceedings dated 07.03.2024 in addition to Rs.7,16,018 /- it was also found that there was excess claim Input Tax Credit to the extent of Rs.15,45,336/-.

4. It is submitted by the learned counsel for the petitioner that a notice in Form DRC01 was issued on 23.12.2023. Thereafter, three personal hearings were offered viz., 23.01.2024, 01.03.2024 and 04.03.2024. However, the petitioner did not respond 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 "view additional notices" column in GST Portal, thereby, the petitioner was unaware of the impugned order of assessment. It is also submitted by the learned counsel for the petitioner that pursuant to the impugned order, recovery proceedings were initiated and bank account has been attached. It is further 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 discrepancies.

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 Special Government Pleader appearing for the respondents does not have any serious objection.

6. By consent of both parties, the writ petitions stand disposed of on the following terms:

a) The impugned order dated 07.03.2024 is set aside.

b) The petitioner shall deposit 25% of the disputed taxes arrived at vide impugned order dated 07.03.2024, 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/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.

02.01.2025

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

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MOHAMMED SHAFFIQ, J.

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