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.38784 of 2024
and
W.M.P.Nos.41997 and 41998 of 2024

M/s.Sansum Opto Electronics Co.,
(Represented by its proprietor S.Sheela Devi)
17-A, Sidco Industrial Estate,
Ariyanoor, Veerapandi Post. ... Petitioner

Vs.

1. The State Tax Officer,
Kondalampatty Assessment Circle,
3rd Floor, Integrated Commercial Taxes,
Building, Pitchards Road, Kondalampatty,
Salem 636 007.

2. The Deputy Commissioner (ST)(GST)(APPEAL),
Integrated Commercial Taxes Building,
Room No.233, 2nd Floor, No.17,
Pitchards Road, Salem 636 007. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the impugned order bearing GSTIN:33AIHPS2653J1Z2/2018-19 dated 20.11.2023 passed by the 1st respondent and quash the same.

For Petitioners : Mr.M.S.Sanjay Nikaash

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The present writ petition has been filed challenging the impugned order passed by the respondent in GSTIN:33AIHPS2653J1Z2/2018-19 dated 20.11.2023 , passed by the 1st 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 manufacturing of LED Lighting Products and Electronic Embedded Products 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 verification of the returns it was found that there was mismatch between GSTR 3B and GSTR 2A and mismatch between GSTR 3B and GSTR 1.

3. It is submitted by the learned Counsel for the petitioner that an intimation in ASMT-10 was issued on 06.04.2023 followed by a notice

in Form DRC 01A on 30.06.2023. Thereafter a notice in DRC01 dated 04.10.2023. An opportunity of personal hearing was also granted to the petitioner on 18.10.2023. In response, the petitioner filed a reply dated 18.10.2023 and requested 15 days time to file a detailed reply. 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 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 20.11.2023 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.

02.01.2025

Speaking (or) Non Speaking Order
Index : Yes/ No
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To

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MOHAMMED SHAFFIQ, J.

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