IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.39427 of 2024
and
W.M.P.Nos.42691 and 42693 of 2024

Ganapathy Steels,
Represented by its proprietor, G.Ramesh,
No.1/28, Padmanaba Nagar Main Road,
Choolaimedu, Chennai 600 094. ... Petitioner

Vs.

1.The Deputy Commissioner (ST),
GST Appeal, Chennai 1,
3rd Floor, C.T. Annexe Building,
No.1, Greams Road, Chennai 600 006.

2.The Deputy State Tax Officer,
MMDA Colony Assessment Circle,
Integrated Commercial Taxes Building,
No.10, 2nd Floor, Palaniappa Maligai,
Greams Road, Chennai 600 006. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the second respondent demand order made in No.ZD3312232401516 dated 28.12.2023 and order dated 17.10.2024 made by the first respondent in ARN

No.AD330724030112Q and quash the same and consequently direct the respondent to give an opportunity of personal hearing.

For Petitioner : Mr.N.Chandirasekar for Mr.P.Suresh Babu

For Respondents : Mr.G.Nanmaran, Special Government Pleader.

ORDER

The present writ petition is filed challenging the impugned order passed by the second respondent dated 28.12.2023 relating to the assessment year 2017-18.

2. The petitioner is engaged in the business of Steels and Irons within the State and is registered under the Goods and Services Tax Act, 2017. During the relevant period viz., 2017-18, the petitioner filed its returns and paid the appropriate taxes. However, during the scrutiny of the petitioner's return, it was noticed that there was an alleged mismatch between the Reverse Charge declared and the Input Tax Credit claimed in the return.

2.1. Pursuant thereto, a Show Cause Notice in FORM GST DRC-01 was issued on 30.09.2023. Personal hearings were offered on 04.11.2023, 27.11.2023 and 07.12.2023. In response to the Show Cause Notice, the petitioner had filed its reply on 29.11.2023. However, the reply has been rejected on the premise that the petitioner had failed to furnish the supporting documents. Hence, the impugned order came to be passed, confirming the proposal.

3. The impugned order is challenged on the premise that neither the show cause notices 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. It is 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. 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 is submitted by the learned

counsel for the petitioner that the petitioner had filed an appeal dated 17.07.2024 before the Appellate Authority along with 10% pre-deposit, which has been rejected on the ground of being barred by limitation and his only request is that the same may be adjusted towards 25% of the disputed tax, to which, the learned Special Government Pleader appearing for the respondents 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 28.12.2023 and the consequential appeal rejection order dated 17.10.2024 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.

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
Neutral Citation: Yes/No
shk

To:

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MOHAMMED SHAFFIQ, J.

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