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.39422 of 2024
and
W.M.P.Nos.42685 and 42686 of 2024

Techno Sales Corporation Pvt. Ltd.,
Represented by its Director, Sunaina Joseph,
7th Floor, No.715, A Spencer Plaza,
Suite No.409 Mount Road, Anna Salai,
Chennai 600 002. ... Petitioner

Vs.

1.The Deputy Commissioner (CT),
O/o. The Deputy Commissioner (ST),
GST-Appeal, Chennai -I,
Main Building, 2nd Floor, Room No.210,
No.1, Greams Road, Chennai 600 006.

2.The Deputy State Tax Officer -1/
The Deputy Commercial Tax Officer,
Anna Salai Assessment Circle, Chennai III Zone,
Chennai Central Division, Tamil Nadu. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for demand order made in Reference No.ZD33042423627N dated 29.04.2024 by the second respondent and order dated 25.10.2024 passed in ARN # AD331024033225R passed by first respondent 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 29.04.2024 relating to the assessment year 2018-19.

2. The petitioner is engaged in providing works contract services and services related to articles of plaster or of compositions, aluminium bars, rods and profiles, aluminium structures and safety glass. The petitioner is registered under the Goods and Services Tax Act, 2017. During the relevant period viz., 2018-19, the petitioner filed its returns and paid the appropriate taxes. However, an audit was conducted at the petitioner's place of business. During the course of audit, the following discrepancies were noticed *inter alia* including Excess Claim of Input Tax Credit, Short Payment of Tax and

Difference in Outward Supply turnover.

2.1. Pursuant thereto, a Show Cause Notice in FORM GST DRC-01 was issued on 24.01.2024. Reminders along with personal hearings were issued on 07.03.2024, 19.03.2024 and 10.04.2024. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. 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 17.10.2024 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 29.04.2024 and the consequential appeal rejection order dated 25.10.2024 are set aside.

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

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MOHAMMED SHAFFIQ, J.

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