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.39826 of 2024
and W.M.P.Nos.43164 & 43165 of 2024

Shri Challenge Industries
6, Prabha Nagar, AN Colony
Valmiki Street, 5th Main Road,
Mudichur, Chennai 600 048,
Rep by its Proprietor ... Petitioner

Vs.

The State Tax Officer (ST),
Thirumudivakkam Assessment Circle,
Integrated Commercial Taxes
Department Building (South Tower)
Block No.19, T.S.No.2, 3rd Floor,
Room No.344, Nandanam,
Chennai 600 035. ...Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent leading to issuance of Impugned Order dated 22.05.2024 vide GSTIN: 33BPQPA3582P1ZE / 2018-2019 and quash the same and direct the respondent to pass order after considering the reply to be filed by the petitioner.

For Petitioner	:	Dr.S.Sathyanarayanan
For Respondent	:	Mr.V.Prashanth Kiran, Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 22.05.2024 passed by the respondent relating to the assessment year 2018-2019 on the ground of violation of principles of natural justice.

2. Mr.V.Prashanth Kiran, learned Government Advocate 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. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of manufacturing Carton boxes and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2020-2021, the petitioner had filed its returns and paid the appropriate taxes. However, on the basis of the alleged report of the Joint Commissioner (ST), Chennai, it was noticed that one Tvl.Sree Jayavarmatha, was non-existent firm and the petitioner had availed ITC on the strength of the invoices received from the said fictitious person without receiving any goods.

3.1. It is submitted by the learned counsel for the petitioner that an intimation notice in Form DRC-01A was issued to the petitioner on 14.02.2024 along with an opportunity of personal hearing on 21.02.2024, followed by which, a show cause notice in Form DRC-01 was issued to the petitioner on 13.03.2024 along with personal hearing opportunity on 28.03.2024 through common portal. Further, three reminder notices were issued to the petitioner on various dates by mentioning the date of personal hearing granted to the petitioner. However, the petitioner had neither filed its reply nor availed the opportunities of personal hearing.

4. The learned counsel for the petitioner would further submit that notices and orders were uploaded under the "Additional Notices and Orders" 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,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes.

6. 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, to which the learned Government Advocate appearing for the respondent does not have any serious objection.

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

a) The impugned order dated 22.05.2024 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 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.

8. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

02.01.2025

Index : Yes / No
Internet : Yes/ No
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MOHAMMED SHAFFIQ, J.
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To

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