IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.39859 of 2024
and
W.M.P.Nos.43186 and 43187 of 2024

M/s.Shri Shiv Shakthi Enterprises,
Represented by its Proprietrix,
P.Geetha,
No.157, Angappa Naicken Street,
Chennai 600 001. ... Petitioner

Vs.

The Deputy State Tax Officer -II,
Harbour Assessment Circle,
No.32, Integrated Commercial Taxes Buildings,
Room No.325, 3rd Floor,
Elephant Gate Bridge Road,
Chennai 600 003. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records pertaining to the impugned order dated 21.08.2024 passed by the respondent against the petitioner's firm vide GSTIN-33AAGPG2598H1ZP, for the Assessment year 2019-2020 and quash the same as illegal, arbitrary and against the principles of natural justice.

For Petitioner : Mr.K.M.Malarmannan

For Respondent : Mrs.Vasanthamala,
Government Advocate.

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 21.08.2024 relating to the assessment year 2019-20.

2. The petitioner is engaged in the business of trading plastic PVC pipes, switches, MCB boxes, glossy white plates, sockets etc., and is registered under the Goods and Services Tax Act, 2017. During the relevant period of 2019-20, the petitioner filed its returns and paid the appropriate taxes. However, on examination of the information furnished in GSTR-01, GSTR-2A, GSTR-3B, EWB and other records available, the following discrepancies were noticed viz.,

i. Excess Claim of Input Tax Credit.

ii.Under Declaration of Ineligible Input Tax Credit under Section 17(5) of the SGST Act, 2017.

iii.ITC claimed from cancelled dealers, return defaulters and tax non-payers.

2.1. Pursuant thereto, a Show Cause Notice in DRC-01 was issued on

22.05.2024, followed by reminder on 25.06.2024. Personal hearings were offered on 05.06.2024, 09.07.2024 and 31.07.2024. In response to the Show Cause Notice, the petitioner had filed its reply on 04.07.2024, explaining the discrepancies. However, the reply has been rejected on the premise that the petitioner had failed to file any supporting documents. Hence, the impugned order came to be passed, confirming the proposal.

3. 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 ***Sree Manoj International Vs. Deputy State Tax Officer in W.P.No.10977 of 2024 dated 25.04.2024,*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 10% of the disputed taxes. It was further submitted that the petitioner is ready and willing to pay 10% 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 submitted that there is bank attachment and the same may be lifted to which the learned Government Advocate appearing for the respondent does not have any serious objection.

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

a) The impugned order dated 21.08.2024 is set aside.

b) The petitioner shall deposit 10% 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 10% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 10% 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 10% 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 10% 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 10% 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., 10% 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.

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

03.01.2025

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

To:

The Deputy State Tax Officer -II,
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MOHAMMED SHAFFIQ, J.

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