IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.39662 of 2024
and
W.M.P.Nos.42951and 42953 of 2024

M/s Blasto Metal Spray Processors,
Represented by its Proprietor C Ramesh,
Plot No.10, 6th Right Street,
Manikandapuram,
Thirumullaivoyal,
Chennai 600 062. ... Petitioner

Vs.

Superintendent of GST and CE,
Ambattur Outer Range,
Ponneri Division,
Chennai Outer Commissionerate,
R-40, A-1, 100 Feet Road,
TNHB Complex, Mogappair,
Chennai 600 037. ... Respondent

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 impugned Order-in-Original 04/2022-GST dated 19.12.2022 passed by the respondent and quash the same.

For Petitioner : Mr.P.Gowtham

For Respondent : Mr.K.S.Ramaswamy,
Senior Standing Counsel.

ORDER

The present writ petition is filed challenging the impugned Order-in-Original 04/2022-GST passed by the respondent dated 19.12.2022.

2. The petitioner is engaged in the business of machining and surface treatment for windmill components and is registered under the Goods and Services Tax Act, 2017. During the relevant period, the petitioner filed its returns and paid the appropriate taxes. However, an investigation was initiated by the Headquarters' Preventive Unit after receiving an Alert Notice from Chennai North Commissionerate regarding passing of Input Tax Credit on the strength of the fake invoices without supply of goods by a fictitious supplier viz., M/s.Mahendra Enterprises. On investigation, it was noticed that the petitioner had allegedly availed Input Tax Credit in respect of invoices issued by the above said M/s.Mahendra Enterprises and also M/s Vijay Lakshmi Industries.

2.1. Pursuant thereto, summons were issued to the petitioner followed by a Show Cause Notice dated 29.06.2022. Personal hearing was offered on 06.12.2022. 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. 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 was further submitted that subsequent to the passing of the impugned order, the petitioner had remitted entire 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 Senior Standing Counsel 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-in-Original 04/2022-GST dated 19.12.2022.

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.

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

MOHAMMED SHAFFIQ, J.

shk

To:

Superintendent of GST and CE,
Ambattur Outer Range,
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