IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2025

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.2 of 2025
and W.M.P.Nos.2 & 3 of 2025

Tvl. Oviya Enterprises,
Rep., by its Proprietor Mr.R.ShanmugaSundaram
No.24/12/1, Covai Main Road, Perunthurai,
Erode 638 502. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Perundurai Assessment Circle,
Erode – 638 002. ...Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the order passed by the respondent in GSTIN 33BMZPS7107Q1ZY/2020-21 along with Form GST DRC-07 in Ref No.ZD330924081046D dated 12.09.2024 and quash the same to the extent of ITC claimed ineligible, as arbitrary, bad in law and consequently direct the respondent to drop the proceedings in entirety.

For Petitioner : Mr.P.Arumugam
for Mr.M.Narasimha Bharathi

For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 12.09.2024, passed by the respondent relating to the assessment year 2020-21.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of buying and selling of waste, parings and scrap of plastics, polymers of ethylene, babies garments and clothing accessories, knitted or crocheted cotton thread, sewing containing any synthetic staple fibre and is registered under the GST Act. During the relevant period of 2020-21, the petitioner has filed the returns and paid appropriate taxes. However, the petitioner's return was scrutinized under Section 61 of the TNGST Act. During the scrutiny, it was found that the petitioner had availed Input Tax Credit (ITC) in respect of supplies from one Tvl. L.M Steel Corporation, which according to the respondent/authority is fictitious/non-existent entity.

3. It is submitted by the learned counsel for the petitioner that having commenced with the proceedings of scrutinizing the returns under Section 61 of the Act, the failure on the part of the Assessing Authority to go through the process under Section 61 of the Act namely issuance of ASMT-10. Pursuant thereto, an intimation notice in Form DRC-01A dated 04.06.2024 was issued to the petitioner. Thereafter, a show cause notice in Form DRC-01 dated 01.07.2024 was issued and personal hearing opportunity was also granted to the petitioner. However, the petitioner had neither filed its reply nor availed an opportunity of personal hearing. Hence, the impugned order came to be passed, confirming the proposals.

4. Mr.C.Harsha Raj, the learned Additional Government Pleader takes notice for the respondent would submit that the petitioner had not responded to the said notices and having not participated in the proceedings, the petitioner is not in a position to question the assessment order.

5. In response, the learned counsel for the petitioner would further submit that notices and orders were uploaded under the “View 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.

6. The learned counsel for the petitioner would 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.

7. 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, to which the learned Additional Government Pleader appearing for the respondent does not have any serious objection.

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

a) The impugned order dated 12.09.2024 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.

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

06.01.2025

Index : Yes / No
Internet : Yes/ No
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To

The Assistant Commissioner (ST),

Perundurai Assessment Circle,
Erode – 638 002.

MOHAMMED SHAFFIQ, J.

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