IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.52 of 2025
and
W.M.P.Nos.59 and 61 of 2025

M/s.Sri Ambal and Co
Represented by its Partner
S A Nandakumar
79E, Avinashi Road, Annur,
Coimbatore 641 653. ... Petitioner

Vs.

1.Assistant Commissioner of ST
Personal Assistant to Joint Commissioner (ST)
Intelligence, Coimbatore,
Dr.Balasundaram Road, Coimbatore 641 018.

2.Assistant Commissioner ST
Annur Assessment Circle
Dr.Balasundaram Road, Coimbatore 641 018. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the impugned order of the first respondent passed in GSTIN:33AAMFS8609M1ZL/2017-18 dated 18.04.2024 and quash the same.

For Petitioner : Mr.N.Murali

For Respondents : Mr.V.Prashanth Kiran,
Government Advocate.

ORDER

The present writ petition is filed challenging the impugned order passed by the first respondent dated 18.04.2024 relating to the assessment year 2017-18.

2. The petitioner is engaged in the construction of highways and road and the trading of related materials and is registered under the Goods and Services Tax Act, 2017. During the relevant period of 2017-18, the petitioner filed its returns and paid the appropriate taxes. However, on verification of the petitioner's Day Book, Ledgers, Bank Statements, Trading, Profit and Loss Statements, Balance Sheet, IT Statement, GST returns in form GSTR-1, 2A, 3B and other connected records, it was *inter alia* noticed that there was an omission of the lease payment under Reverse Charge Mechanism (RCM) for the year 2017-18.

2.1. Pursuant thereto, a notice in DRC-01A was issued on 18.08.2023, followed by a Show Cause Notice in DRC-01 on 22.09.2023. Personal hearings were offered on 09.11.2024, 09.02.2024 and 27.02.2024. In response to the Show Cause Notice, the petitioner had filed its reply on 02.12.2023 providing a detailed explanation for the alleged discrepancies. However, the reply was 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 ***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 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 respondents 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 18.04.2024 is set aside.

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

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

06.01.2025

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

MOHAMMED SHAFFIQ, J.

shk

To:

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