IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.40047 of 2024
and
W.M.P.Nos.43320 and 43322 of 2024

Sri 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 to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent leading to issuance of impugned order dated 22.05.2024 vide GSTIN: 33BPQPA3582P1ZE/2017-2018 and quash the same and direct the respondent to pass order after considering the reply to be filed by the petitioner.

For Petitioner : Mr.G.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 in GSTIN 33BPQPA3582P1ZE/2017-2018, on the premise that the same is made in violation of principles of natural justice.

2. 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 GST Act. During the relevant period of 2017-18, the petitioner had filed the returns and paid appropriate taxes. However, on verification of the returns filed by the petitioner it was found that Tvl.Sree Jayavarmatha is a fictitious entity and the petitioner had availed credit on the strength of notices issued by Tvl.Sree Jayavarmatha.

3. It is submitted by the learned Counsel for the petitioner that an intimation in notice DRC 01A was issued to the petitioner on 14.02.2024 with personal hearing on 21.02.2024, followed by a notice in DRC01 on 13.03.2024 with personal hearing on 28.03.2024. Thereafter 3 reminder notice with personal hearing was also issued to the petitioner viz., 26.04.2024, 06.05.2024 and 14.05.2024. However, the petitioner had not responded to any of the above notices / intimation and the impugned order came to be passed. It is submitted by the learned counsel for the petitioner that neither the show cause notices nor the impugned order of assessment has been served on the petitioner by tender or sending it by RPAD, instead it had been uploaded under "view additional notices and orders" tab of the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. It is further submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, he would be able to explain the alleged discrepancies.

4. 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.

5. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that he 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.

6. 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 of 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.

7. 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
spp

To:

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MOHAMMED SHAFFIQ, J.

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