IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.39520 of 2024
and
W.M.P. Nos.42795 and 42796 of 2024

Tvl.Sanjaykumar Textiles,
GSTIN:33AYLPM4069J1Z2,
Represented by its Proprietor Jagannthan Manjunathan,
147, 148, First Floor,
Sri Mahalakshmi Textiles Market, Bargur,
Krishnagiri-635 104. ... Petitioner

Vs.

The Deputy State Tax Officer-1,
Krishnagiri-II,
SF.No.559/5, Ground Floor, Kallakkurukki Village,
Saamanthamalai post, Ramapuram (SO),
Collector office Backside, Krishnagiri-635 115. ... 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 in Form GST DRC-07 bearing reference number ZD331123071369I/2020-21 dated 14.11.2023 issued by the Respondent and quash the same.

For Petitioner : Mr.G.Derrick Sam

For Respondent : Mr.G.Nanmaran
Special Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 14.11.2023 for the assessment year 2020-21.

2. It is submitted by the learned counsel for the petitioner that the petitioner is registered under the Goods and Services Tax Act, 2017. During the relevant period 2020-21, the petitioner filed its returns and paid the appropriate taxes. On scrutiny of returns, it was noticed that the petitioner has claimed excess input tax credit on inward RCM supplies in GSTR 3B (Table 4(A)(2)+(3)) than the actual reverse charge liability declared and paid in table 3.1(d), the same is extracted hereunder:

Tax paid	***ITC claimed on inward RCM supplies in GSTR-3B (as per Table 4(A)(2) + 4(A)(3))***			***Reverse Charge Liability declared in GSTR-3B (as per table 3.1(d))***			***Shortfall(-) / Excess***		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
April 20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
May 20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Jun 20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Jul 20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Jul 20	0.00	43,924.00	43,924.00	0.00	0.00	0.00	0.00	43,924.00	43,924.00
Aug-20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Sep-20	4,500.00	39,802.00	0.00	0.00	0.00	0.00	4,500.00	39,802.00	39,802.00
Oct-20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Nov-20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Tax paid	ITC claimed on inward RCM supplies in GSTR-3B (as per Table 4(A)(2) + 4(A)(3))			Reverse Charge Liability declared in GSTR-3B (as per table 3.1(d))			Shortfall(-) / Excess		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
Dec-20	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Jan-21	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Feb-21	104.10	0.00	0.00	0.00	0.00	0.00	104.10	0.00	0.00
Mar-21	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
TOTAL	5,104.10	110,618.00	110,618.00	0.00	0.00	0.00	5,104.10	110,618.00	110,618.00

3. It is submitted by the learned counsel for the petitioner that a notice in DRC-01A was issued on 22.08.2023 and another notice in DRC-01 was issued on 12.10.2023. However, the petitioner had neither filed its reply nor paid the disputed taxes. 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 the “view additional notices and orders” on the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the adjudication proceedings. 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.

4. The learned counsel for the petitioner would 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 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 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 14.11.2023 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 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.

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

02.01.2025

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
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MOHAMMED SHAFFIQ, J.

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