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.31 of 2025
and W.M.P.Nos.39 & 40 of 2025

Tvl.Kyyba India Private Limited,
Represented by its Director,
Mrs.K.Thilagavathy,
Flat No.10, Door No 1-B,
Shyams Garden, Khader Nawaz Khan Road,
Nungambakkam, Chennai - 600 006. ... Petitioner

Vs.

1. State Tax Officer,
   Nungambakkam Assessment Circle,
   No.88, Mayor Ramanathan Salai,
   Chetpet, Chennai 600 031.

2. Deputy Commissioner (ST), GST Appeal Chennai I,
No.1, PAPJM Buildings (Annex),
3rd Floor Greams Road,
Chennai - 600 006. ...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of

India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st Respondent in GSTIN NO.33AABCV8937F2Z6 for the Financial Year 2018-19 and quash the order passed u/s.74 of the Act in GSTIN No.33AABCV8937F2Z6/2018-19 along with the summary order having Reference No.ZD3301241425940 dated 30.01.2024 by the 1st Respondent as illegal, arbitrary and without jurisdiction and consequentially direct the 1st Respondent to lift the attachment of bank account and debtors as part of recovery proceedings, refund the sum of Rs.6,12,345/- recovered by the GST Department by way of demand draft from the bank account of the Petitioner.

For Petitioner : Mr.A.Sharren
For Respondent : Mr.G.Nanmaran,
Special Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 30.01.2024 passed by the first respondent relating to the assessment year 2018-19 on the ground of violation of principles of natural justice.

2. Mr.G.Nanmaran, learned Special Government Pleader, takes notice on behalf of the respondents. By consent of the parties, the main Writ Petition is taken up for disposal at the admission.

3. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of providing software technology and consultancy services to foreign companies and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2018-19, the petitioner had filed its returns and paid the appropriate taxes. While so, there was an audit of the petitioner's place of business and pursuant to that, the petitioner was sanctioned refund of Input Tax Credit on Export of Goods & Services, however, the above ground of refund was found to be erroneous.

4. Subsequently, an intimation notice in Form DRC-01A was issued to the petitioner on 15.04.2023, followed by a show cause notice in Form DRC-01 on 17.06.2023. Further, personal hearing opportunities were offered to the petitioner on 27.06.2023, 19.10.2023, 02.11.2023 and 11.12.2023 to the petitioner. However, the petitioner had neither filed its reply nor availed the opportunities of personal hearing.

5. It is submitted by the learned counsel for the petitioner that the impugned order is challenged on the premise that the 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 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 ***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 submitted that, pursuant to the impugned order dated 30.01.2024, recovery proceedings were initiated against the petitioner and petitioner's Bank account has been attached, and more than a sum of Rs.6 lakhs has already been recovered from the petitioner's Bank account and garnishee proceedings was also issued to the petitioner's debtors.

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

a) The impugned order dated 30.01.2024 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.

8. 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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MOHAMMED SHAFFIQ, J.
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To

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