



W.P. No.39501 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.39501 of 2024

and

W.M.P. Nos.42766 and 42767 of 2024

Tvl.V.K.D.Stores

Rep, it is Proprietor Mr.Janagarajan Saravanan,
No.198, Kakkan Colony,
Kodambakkam High Road,
Chennai-600 087.

... Petitioner

Vs.

The State Tax Officer/ Commercial Tax Officer
Nandambakkam Assessment Circle,
Nandambakkam South-II,
Chennai South, Room No.307, III Floor,
Nandanam, Chennai-600 035.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the Respondent in GSTIN:33AKCPS7312K123/2018-19 and consequential order under Section 73 and summary of the order in Form GST DRC-07 bearing Reference No.ZD330424098410L/2018-19 and both dated 12.04.2024 and quash the same as it has been passed in gross violation of principles of natural justice and not in conformity with the principles laid by the decision of this Court in the case of JAK Communications vs. The Deputy Commercial Tax Officer and others (W.P.No.35453 of 2023 dated 19.12.2023)

For Petitioner

: Mr.M.Ramesh

for Mr.Rupesh Sharma

For Respondent

: Ms.Amrita Dinakaran



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Government Advocate

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ORDER

The writ petition is filed challenging the impugned order dated 12.04.2024 for the assessment year 2018-19.

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 2018-19, the petitioner filed its returns and paid the appropriate taxes. There was a scrutiny of the returns under Section 61 of the Act, during the course of scrutiny of such scrutiny, it was noticed that there was a discrepancy between GSTR 3B and GSTR 2A.

3. It is submitted by the learned counsel for the petitioner that pursuant thereto, a notice in DRC-01 was issued on 29.12.2023 followed by reminder dated 04.04.2024 and personal hearing was fixed on 10.04.2024. However, the petitioner had neither filed its reply nor availed the opportunity for a personal hearing. 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 in “additional notices and orders” tab on the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and was thus unable to participate in the



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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 12.04.2024 is set aside.
- b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondent, within a period of four



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weeks from the date of receipt of a copy of this order.

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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.



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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.

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Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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MOHAMMED SHAFFIQ, J.

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To:
The State Tax Officer/ Commercial Tax Officer
Nandambakkam Assessment Circle,
Nandambakkam South-II,
Chennai South,
Room No.307, III Floor,
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