IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2025

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.104 of 2025
and W.M.P.Nos.122 & 123 of 2025

Tvl. Stone Technics,
Represented by its Proprietor Ms.Krina Suketu Patel,
No.104, Narayana Mudali Street,
Kothaval Chavadi, Sowcarpet,
Chennai 600 079. ... Petitioner

Vs.

1.The State Tax Officer
N.S.C. Bose Road Assessment Circle,
Station: No.32, Elephant Gate Bridge Road,
Integrated Commercial Taxes Offices,
Chennai (North) Division, Chennai 600 003.

2.The Deputy Commissioner (ST) Appeals
GST – Appeals, Chennai – I,
3rd Floor, C.T.Annexe Building,
No.1, Greams Road, Chennai 600 006.

3.The Branch Manager,
State Bank of India,
The Chambers near Grand,
Bhagwati Road, Ahmedabad. ...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order Ref. No. GSTIN 33ACCPP5291L1ZB/2018-19 dated 05.09.2023 along with summary of the order in Form DRC 07 Reference No.ZD330923021088J dated 05.09.2023 passed by the first respondent and quash the same as the same being arbitrary and subsequently lift the bank attachment made vide letter Ref.No.33ACCPP5291L1ZB/2024 dated 15.07.2024 along with DRC 13 dated 15.07.2024 by the first respondent.

For Petitioner	:	Mr.M.S.Sanjay Nikaash
For R1 & R2	:	Mrs.Vasanthamala, Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order dated 05.09.2023 passed by the first respondent relating to the assessment year 2018-2019.

2. Mrs.Vasanthamala, learned Government Advocate takes notice on behalf of the respondent. By consent of the parties, the main writ petition is taken up for disposal at the admission stage itself.

3. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in the business of wholesale and retail sales of Bricks, Block and other Ceramic goods of Siliceous Fossil Meals falls under HSN 69010010 and is registered under Goods and Service Tax Act, 2017. During the relevant period 2018-2019, the petitioner had filed its return and paid the appropriate taxes. However, on scrutiny of the returns filed by the petitioner, it was noticed that there were mismatch between GSTR3B and GSTR9/9C; GSTR3B and Form 26AS of the Income Tax Act form.

3.1. Subsequently, a notice in Form ASMT-10 was issued to the petitioner on 03.07.2023, and a show cause notice in Form DRC-01 was issued to the petitioner on 04.08.2023 along with an opportunity of personal hearing. However, the petitioner had neither filed its reply nor availed an opportunity of personal hearing. Hence, the impugned order came to be passed by the first respondent, confirming the proposal. Aggrieved by the said order, the petitioner preferred an appeal on 03.02.2024 before the appellate Authority/second respondent and the same was dismissed on 19.03.2024 on the premise it is barred by limitation. Further, he would submit that the petitioner had already remitted 10% of the disputed tax as pre-deposit for filing an appeal.

4. The learned counsel for the petitioner would further submit that notices and orders were uploaded under the “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 also 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.

5. 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***. 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 respondents 1 & 2 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 05.09.2023 is set aside.

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondents 1 & 2, 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 respondents 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.

07.01.2025

Index : Yes / No
Internet : Yes/ No
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To

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MOHAMMED SHAFFIQ, J.

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