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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.58 of 2025
and W.M.P.Nos.67 & 68 of 2025

M/s.Shree Imaging Technologie Private Limited
Represented by its Director Mr.D.Suresh
No.262, Narasimhan Street,
Sri Balaji Nagar, Pallikaranai,
Tamil Nadu, Chennai 600 100. ... Petitioner

Vs.

The Assistant Commissioner (ST)(FAC),
K.K.Nagar Assessment Circle,
Greams Road, Annexe Building,
Tamil Nadu,
Chennai 600 006. ...Respondent

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 passed by the respondent in GSTIN/33AAXCS1208C1ZK/2021-22 dated 28.06.2024 and quash the same.

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For Petitioner : Mr.R.K.Ramaiah
For Respondent : Ms.Amrita Dinakaran,
Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order dated 28.06.2024 passed by the respondent relating to the assessment year 2021-2022.

2. Ms.Amrita Dinakaran, 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.

3. The petitioner is engaged in the business of supply of medical equipment's and is registered under Goods and Service Tax Act, 2017. During the relevant period 2021-2022, the petitioner had filed its return and paid the appropriate taxes. However, on scrutiny of the monthly returns filed by the petitioner, the following discrepancies were noticed:

i) Mismatch in turnover between GSTR-1 and GSTR-3B

ii) Mismatch in ITC claimed between GSTR-3B and GSTR-2A

iii) Undue claim of ITC-17(5)(b)

iv) Inward supply return

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v) Outward supply return

vi) ITC claim

vii) Tax under Rule 86(B)

4. Pursuant thereto, a notice in Form DRC-01A was issued to the petitioner on 20.09.2022 followed by a show cause notice in Form DRC-01 was issued to the petitioner on 13.12.2022 along with an opportunity of personal hearing. Thereafter, a reminder notice was also issued to the petitioner on 11.06.2024. 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 respondent, confirming the proposal.

5. 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 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.

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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.

7. 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.

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

a) The impugned order dated 28.06.2024 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.

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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.

g) On complying with the above condition, the impugned order of

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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.

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

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Index : Yes / No
Internet : Yes/ No
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To

The Assistant Commissioner (ST)(FAC),
K.K.Nagar Assessment Circle,
Greams Road, Annexe Building,
Tamil Nadu,
Chennai 600 006.

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MOHAMMED SHAFFIQ, J.

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