IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2025

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.102 of 2025
and W.M.P.Nos.120 & 121 of 2025

Tvl.Thirumurugan Timbers
Represented by its Proprietor,
Mr.Manickam
48/1, Seetharampalayam, Sankari Road,
Tiruchengode, Namakkal 637 211 ... Petitioner

Vs.

The Deputy State Tax Officer – 1,
Tiruchengode (Town)
100/3, SSD Road Pavadi
Chengundar Trust Building, First Floor,
Tiruchengode 637 211. ...Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned Order u/s.74 dated 17.05.2023 having reference number ZD330523081111Y for the tax period July 2017 to March 2018 passed by the respondent and quash the same.

For Petitioner	:	Mr.S.Anandh
For Respondent	:	Ms.Amrita Dinakaran, Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order dated 17.05.2023 passed by the respondent relating to the assessment year 2017-2018.

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 trading in timber and is registered under Goods and Service Tax Act, 2017. During the relevant period 2017-2018, the petitioner had filed its return and paid the appropriate taxes. While so, on scrutiny of the returns under Section 61 of the Act, it was noticed that the petitioner had availed excess Input Tax Credit.

3.1. Subsequently, a notice in Form ASMT-10 dated 07.10.2022, followed by a show cause notice in Form DRC-01 dated 15.02.2023 were issued to the petitioner through common portal. The petitioner also filed a reply to the said show cause notice on 22.03.2023 and produced invoices issued by the suppliers for verification of eligibility of input tax credit. However, the impugned order came to be passed by the respondent on the premise that the supplier viz., Tvl.Srinivasa Timber Traders, Salem, had not migrated from VAT to GST.

4. It is submitted by the learned counsel for the petitioner that the petitioner may be granted one more opportunity to substantiate its claim and also to explain the alleged discrepancies before the respondent. 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 17.05.2023 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.

07.01.2025

Index : Yes / No
Internet : Yes/ No
jd

MOHAMMED SHAFFIQ, J.

jd

To

The Deputy State Tax Officer – 1,
Tiruchengode (Town)
100/3, SSD Road Pavadi
Chengundar Trust Building, First Floor,
Tiruchengode 637211.

W.P.No.102 of 2025

07.01.2025