IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.588 of 2025 and
W.M.P.Nos.716 & 717 of 2025

RMG Enterprises,
Represented by its Proprietor
R.Madhana Gopal,
436, Mettuplayam Road, Coimbatore-43.

...Petitioner

Vs.

The Commercial Tax Officer (FAC),
Avarampalayam Circle, Coimbatore. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari, calling for the records on the files of the Respondent herein in TIN/33032223800/2014-15 dated 09.07.2024 and quash the same.

For Petitioner : Mr.R.Vasumithran
For Respondent : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 09.07.2024 passed by the respondent relating to the assessment year 2014-15 on the premise that the impugned order travels beyond the order of remand.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and a deemed assessment was made for the assessment year 2014-15 on 31.10.2015 under the TNVAT Act, 2006. Thereafter, the respondent initiated proceedings for reassessment invoking Section 27(1) of the Act, wherein the difference in purchase turnover was stated and liability of Rs.3,38,225/- and penalty of Rs.3,38,225/- was imposed. Aggrieved by the same, the petitioner preferred an appeal before the Deputy Commissioner (ST) (Appeal) (FAC), Coimbatore, vide order dated 19.10.2023 in AP No.33/2023 (2014-15), an Appellate Authority had remanded the back to the Assessing Officer for fresh consideration.

3. It is the case of the petitioner that pursuant to the order dated 19.10.2023, the impugned order came to be passed, wherein the equal addition for probable

omission was added for the first time, which according to the petitioner was beyond the period of limitation prescribed under Section 27 of the Act. It is also the case of the petitioner that the Assessing Authority had issued a notice on 21.02.2024, directing the petitioner to appear for personal hearing on 07.03.2024. The petitioner had appeared for personal hearing and requested one month time to file their reply. However without any further notice, the impugned order came to be passed on 09.07.2024.

4. It is also submitted by the learned counsel for the petitioner that the petitioner had sufficient materials to demonstrate how the impugned order cannot be sustained. Apart from the fact, that an equal addition for probable omission is also barred by limitation.

5. Mr.C.Harsha Raj, learned Additional Government Pleader appearing for the respondent would submit that the petitioner had only sought for a month time and the impugned order came to be passed long after the time sought for by the petitioner had expired.

6. At this juncture, the learned counsel for the petitioner 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 Additional Government Pleader appearing for the respondent does not have any serious objection.

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

a) The impugned order dated 09.07.2024 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.

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.

21.01.2025

Speaking (or) Non Speaking Order
Neutral Citation: Yes/No
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To
The Commercial Tax Officer (FAC),
Avarampalayam Circle, Coimbatore.

MOHAMMED SHAFFIQ, J.

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W.P.No.588 of 2025

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