IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.1030 of 2025
and
WMP.Nos.1284 & 1285 of 2025

Shri Aaiji Industries,
Rep.by.Prop.Modaramji Dolaram,
1069, Thiruvottiyur High Road,
Thiruvottiyur, Chennai – 600 019. ... Petitioner

Vs.

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

2.The Assistant Commissioner (ST)(FAC),
Thiruvottiyur Assessment Circle,
Station No.32, Integrated Commercial,
Taxes Office Complex,
Elephant Gate Bridge Road,
Chennai – 600 003. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to order in Reference No.ZD331223134809G dated 19.12.2023 passed by the 2nd Respondent and Memorandum vide Rc.No.2373/2024/A1 dated 17.10.2024 passed by the 1st Respondent and to quash the same and to direct the 1st respondent to accept the statutory appeal filed under Tamil Nadu GST Act, 2017 dated 20.06.2024 against recovery order of the 2nd respondent in Order No.ZD331223134809G dated 19.12.2023 without reference to limitation and to further direct the Respondents to defreeze the Bank accounts of the Petitioner having A/c.No.05880210001417 at UCO Bank, New Washermanpet Branch, Chennai – 600 081.

For Petitioner	: Mrs.Y.Kavitha for M/s.P.V.S.Giridhar Associates
For Respondents	: Mr.V.Prashanth Kiran Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 19.12.2023 relating to the assessment year 2017-18 on the ground of violation of principles of natural justice.

2.It is submitted by the learned counsel for the petitioner that the petitioner is a proprietorship firm and engaged in business of Iron and Steel cutting sheets, CRCA sheets, M Sheet and is registered under TNGST Act.

During the relevant period 2017-18, the petitioner filed its returns periodically and paid the appropriate taxes. During the course of scrutiny, it was noticed that there has been short payment of taxes due to excess claim of input tax credit and there was mismatch between GSTR-3B and GSTR-2A/GSTR-2B.

3.It is submitted by the learned counsel for the petitioner that an intimation in ASMT-10 was issued on 26.08.2023, followed by a notice in DRC-01 on 12.09.2023. Further, a personal hearing was offered on 19.09.2023. The petitioner had filed a reply on 12.09.2023. However, the petitioner reply was rejected on the premises that they had not furnished supporting documents in the form of invoice copies along with bank details. Aggrieved by the same, the petitioner preferred an appeal, however, the said appeal was rejected on the ground that it was filed beyond the statutory period.

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 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. It is further submitted that subsequent to the passing of the impugned order, an appeal was also preferred and payment of 10% of disputed tax was made as pre-deposit and his only request is that the same may be adjusted towards 25% of the disputed tax and pursuant to the impugned order of assessment, recovery proceedings were initiated and bank accounts have been attached and requests that the same may be lifted, 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 19.12.2023 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 petition is closed.

Speaking (or) Non Speaking Order
Index : Yes/ No **21.01.2025**
Neutral Citation: Yes/No
sms
To
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MOHAMMED SHAFFIQ, J.

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