IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2025

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.No.26 of 2025
and W.M.P.Nos.30 & 31 of 2025

Tvl. BDIPLUS Lab Private Limited,
Rep by its Director Mr.Dharmarasu Natesan,
No.51/80A, Othavadai Street,
Kodambakkam,
Chennai 600 024. ... Petitioner

Vs.

1.The State Tax Officer,
Office of the State Tax Officer,
Kodambakkam Assessment Circle,
Integrated Building for Commercial Taxes,
No.1, Greams Road, CT Annexure Building, 4th Floor,
Chennai 600 006.

2.Axis Bank,
Rep by its Manager,
No.2, 2nd Main Road, United India Colony,
Kodambakkam, Chennai 600 024. ...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in the impugned proceedings against the impugned order in For GST DRC-07 dated 16.12.2023, under the provisions of CGST Act, 2017 and quash the same and direct the 1st respondent to return back the amount of Rs.13,26,828/- attached from the petitioner bank account and consequently direct the 1st respondent to pass DENOVO order.

For Petitioner	:	Mr.S.Lakshmi Narayanan
For Respondent 1	:	Ms.Amrita Dinakaran, Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order dated 16.12.2023 passed by the first respondent relating to the financial year 2017-18.

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

3. The petitioner is engaged in the business of technology consulting services i.e., maintenance of websites of other firms/creation of multimedia presentations for other firms. The petitioner is registered under Goods and

Services Act, 2017. During the relevant period 2017-2018, the petitioner had filed its return and paid appropriate taxes. However, on scrutiny of the returns, it was found that there was mismatch between GSTR-3B and GSTR-2A.

3.1. Pursuant thereto, a show notice in Form DRC-01 dated 27.09.2023 was issued to the petitioner through GST portal, and thereafter, personal hearing opportunities were also afforded to the petitioner on 29.11.2023, 01.12.2023 & 13.12.2023 respectively. However, the petitioner had neither filed its reply nor availed the opportunities of personal hearing. Hence, the impugned order came to be passed, confirming the proposal.

4. It is submitted by the learned counsel for the petitioner that neither the show cause notice 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 further 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*** to submit that this court has remanded the matter back in similar circumstances subject to payment of 25% of the disputed taxes. It is further submitted by the learned counsel for the petitioner that they have already remitted the entire disputed tax and they may be granted an opportunity before the adjudicating authority to put forth their objections to the proposal.

6. Taking into account the peculiar facts of the case, wherein, the petitioner has already remitted the entire disputed tax, this Court is of the view that the petitioner may be granted one final opportunity to put forth his objections, which was not objected to by the learned Government Advocate for the first respondent.

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

a) The impugned order dated 16.12.2023 is set aside.

b) The petitioner shall deposit 25% of the disputed taxes as admitted by the learned counsel for the petitioner and the first 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 of 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 first 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.

06.01.2025

Index : Yes / No
Internet : Yes/ No
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To

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MOHAMMED SHAFFIQ, J.

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