IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.673 of 2025
and
WMP Nos.823 and 824 of 2024

M/s.Color Tech ... Petitioner

Versus

1.The Deputy Commissioner (ST),
GST Appeal, Chennai-I,
Room No.210, C.T. Buildings, 2nd Floor,
Greams Road, Chennai-600 006.

2.The Assistant Commissioner (ST),
Thirumazhisai Assessment Circle,
No.4/109, Integrated GST Buildings, 2nd Floor,
Chennai Bangalore Highway,
Nazarathpettai, Chennai- 600123 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorarified Mandamus, calling for the records in the order passed by the second respondent in the impugned order in GSTIN/33ADJPA6447P2Z8 dated 21.12.2023 and the summary of orders issued by the second respondent in DRC-07 in Ref.No.ZD331223164960K dated 21.12.2023 and the records of the first respondent in Appeal rejection intimation issued in Form GST APL 2 dated 17.10.2024 in Ref.No.ZD3310241144242 and quash the same as arbitrary and illegal and direct the first respondent to entertain the appeal without reference to limitation and dispose of it on merits and in accordance with law and pass orders.

For Petitioner : Mr.Joseph Prabakar

For Respondent :Mrs.K.Vasanthamala
Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order passed by the respondent dated 21.12.2023 relating to the assessment year 2017-18.

2. The petitioner is a registered dealer under Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. However, on scrutiny of the monthly returns, it was noticed that the petitioner have claimed excess input tax credit over and above the taxes paid under reverse charge mechanism.

2.1. Pursuant thereto, a show cause notice in DRC 01 was issued to the petitioner on 28.09.2023. Further personal hearing was offered on 09.12.2023. However, the petitioner had neither filed its reply nor availed the opportunity of personal hearing. Hence, the impugned order came to be passed, confirming the proposal. Aggrieved by the same, the petitioner had filed an appeal and the same was rejected on the ground that the appeal was filed beyond the period stipulated for filing appeal under the Act.

3. 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.

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***. It is further submitted by the learned counsel for the petitioner that the petitioner had paid more than 60% of the disputed taxes and they may be granted an opportunity before the adjudicating authority to put forth their objections to the proposal.

5. Taking into account the peculiar facts of the case, wherein, the petitioner has already remitted more than 25% of the disputed taxes, 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 respondent, while seeking liberty to verify the correctness of the statement relating to remittance made by the petitioner.

6. Since, the above order is made on the basis of the statement made by the learned counsel for the petitioner that more than 25% of the disputed taxes has been remitted already, the respondent may verify the same. If the statement made by the learned counsel for the petitioner regarding the payment of more than 25% of the disputed taxes is incorrect, the respondent authority shall intimate the same to the petitioner within a week from the date of receipt of a copy of this order, who shall within 2 weeks from the date of such intimation deposit 25% of disputed taxes. Subject to verification of payment of 25% of disputed taxes or on payment of 25% of disputed taxes, attachments if any, would be lifted.

7. In view thereof, the impugned order is set aside. The petitioner shall treat the impugned order of assessment as show cause notice and 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 the petitioner a reasonable opportunity of hearing. It is made clear that if the condition in paragraph 6 of this order, relating to payment of 25% of disputed taxes is not complied with in terms thereof or if the objections are not filed within the stipulated period i.e. four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

8. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

10.01.2024

Speaking (or) Non Speaking Order
Index : Yes/ No
Neutral Citation: Yes/No
mrn

To

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MOHAMMED SHAFFIQ, J.

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