IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.645 of 2025
and W.M.P. Nos.791 and 793 of 2025

Tvl. Sri Hari Builders
Rep. by its Proprietor Mr.H.Dineshraj
No.1, 1st Floor, New Street, Iyyappa Nagar
Madipakkam, Chennai 600 091 ... Petitioner

Vs.

The Assistant Commissioner
Madipakkam Assessment Circle, Tambaram Zone
No.571, Integrated Commercial Taxes and
Registration Department, (South Tower)
Nandanam, Chennai 600035 ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in Order dated 25.08.2024 in GSTN 33BIYPD5391J1ZQ/2019-2020 and quash the same.

For Petitioner : Mr.C.Rekhakumari

For Respondent : Ms.Amrita Dinakaran
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 25.08.2024 relating to the assessment year 2019-2020, on the ground that there is violation of principles of natural justice.

2. Learned counsel for the petitioner submitted that the petitioner company has been engaged in the business of construction and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2019-2020, the petitioner filed its returns and paid the appropriate taxes. On examination of the information furnished in GSTR-01, GSTR-2A and GSTR-3B, the following discrepancies were noticed:

a) ITC to be reversed on non-business transactions & exempt supplies;

b) Invalid ITC under Sec. 16(4); and

c) ITC claimed from cancelled dealers returns defaulters & tax non payers.

3.It is submitted by the learned counsel for the petitioner that in so far as the denial of Input Tax Credit invoking Section 16(4) is concerned, there is a subsequent amendment and this Court in number of cases have remitted the matter back for reconsidering the claim on the basis of the subsequent amendment under Section 16(4). In so far as the other issues are concerned, the learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of **Sree Manoj International Vs. Deputy State Tax Officer in W.P.No.10977 of 2024 dated 25.04.2024**, to submit that this court has remanded the matter back in similar circumstances subject to payment of 10% of the disputed taxes other than the taxes arising out and by way of invoking Section 16(4).

4. It was further submitted that the petitioner is ready and willing to pay 10% 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 raise any serious objection.

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

a) The impugned order dated 25.08.2024 is set aside.

b) The petitioner shall deposit 10% of the disputed taxes other than demand arising on account of denial of ITC invoking Section 16(4) of the Act, as admitted by the learned counsel for the petitioner and the respondent, within a period of four (4) 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 10% of disputed taxes directed as in Clause (b) to be paid. The assessing authority shall then intimate the balance amount out of 10 % of disputed taxes as directed supra to be paid, if any, within a period of one (1) week from the date of receipt of a copy of this order. The petitioner shall deposit such remaining sum within a period of three (3) 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 10% of the disputed taxes as directed in Clause (b), 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 (4) weeks from the date of receipt of copy of this order.

e) Failure to comply with the above condition viz., payment of 10% of disputed taxes within the stipulated period i.e., four (4) 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 10 % 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., 10% of disputed taxes as directed in Clause (b) 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.

6. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

09.01.2025

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Index : Yes/ No
Neutral Citation: Yes/No

MOHAMMED SHAFFIQ, J.

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To:

The Assistant Commissioner
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