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.176 of 2025
and W.M.P.Nos.188 & 193 of 2025

M/s.Saroj Electricals,
Represented by its Proprietor,
Mr.Ashish Bihani,
Having Office at:
No.118, Govindappa Naicken Street,
Sowcarpet, Chennai 600 001. ... Petitioner

Vs.

The Deputy Commercial Tax Officer – I,
Kothawalchavadi Assessment Circle,
Room No.313, Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road, Chennai 3. ...Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order reference No. ZD3302240001359 dated 01.02.2024 for the 2022 – 2023 passed in GSTN No.33ACYPA1407H1ZV, which came to be passed by the office of respondent as per the provisions of U/s.73 of the GST Act, directing "the petitioner to pay a sum of CGST, SGST of Rs.25,657/- and Rs.25,657/- (along with Interest and Penalty) for the Financial Year 2022-2023 and Quash the same as illegal, arbitrary and devoid of merits.

For Petitioner : Mr.R.Venkatesh

For Respondent : Mr.V.Prashanth Kiran,
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order dated 01.02.2024 passed by the respondent relating to the assessment year 2022-2023.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a dealer in Iron steel raw materials and is registered under the Goods and Services Tax Act, 2017. During the relevant period 2022-2023, the petitioner had filed its returns and paid the appropriate taxes. However, on scrutiny of the returns filed by the petitioner, it was found that there was mismatch between GSTR-3B and GSTR-2A.

3. It is submitted by the learned counsel for the petitioner that Form ASMT-10 was issued to the petitioner on 30.09.2023, followed by a show cause notice in Form DRC-01 was issued on 09.11.2023 along with detailed notice and personal hearing was scheduled on 22.11.2023. Further, the reminder notice was also issued to the petitioner by granting an opportunity of personal hearing. However, the petitioner had neither filed its reply nor availed the opportunities of personal hearing. Hence, the impugned order came to be passed by the respondent, confirming the proposals.

4. The learned counsel for the petitioner would further submit that notices and orders were uploaded under the "View Additional Notices and Orders" tab on the GST Portal, thereby, the petitioner was unaware of the initiated proceedings and thus unable to participate in the adjudication proceedings. It is also 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.

6. It was further 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 Government Advocate 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 01.02.2024 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.

06.01.2025

Index : Yes / No
Internet : Yes/ No
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To

The Deputy Commercial Tax Officer – I,

Kothawalchavadi Assessment Circle,
Room No.313, Integrated Commercial Taxes Building,
No.32, Elephant Gate Bridge Road, Chennai 3.

MOHAMMED SHAFFIQ, J.

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