IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM

THE HON'BLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.585 of 2025
and W.M.P. Nos.712 and 713 of 2025

M/s.Insoorya Express Cargo
Represented by its Partner
Mrs.Mala
No.118/273, 2nd Floor
Thambu Chetty Street
Chennai 600 001, Tamilnadu ... Petitioner

Vs.

The Deputy Commercial Tax Officer
No.32, Integrated Commercial Taxes
Elephant Gate Bridge Road
Vepery, Chenai 600 003 ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records pertaining to the impugned order dated 25.10.2023 issued in reference No.ZD3310231428450 by the respondent with respect to assessment year 2017-2018 and quash the same.

For Petitioner : Mr.G.Derick Sam

For Respondent : Mr.K.Vasanthamala
Government Advocate

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 25.10.2023 relating to the assessment year 2017-18 on the ground that there is violation of principles of natural justice.

2. The learned counsel for the petitioner submitted that the petitioner is a dealer registered under the GST regime. During the relevant period 2017-18, the petitioner filed its returns and paid the appropriate taxes. However, on verification of the returns it was noticed that there was a mismatch between GSTR-1 and GSTR 3B. Pursuant thereto, the notice form GST ASMT 10 was issued on 04.08.2023 followed by a DRC-01 on 05.09.2023 along with a detailed notice. Personal hearing was also offered on 09.10.2023, however, the petitioner neither filed its reply nor availed of the opportunity of personal hearing. In view thereof, the impugned order was passed.

3. Learned counsel for the petitioner also 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.

4.It is submitted by the learned counsel for the petitioner that they had preferred an appeal which was not entertained on the premise that it is filed beyond the statutory period stipulated to filing an appeal. It is submitted that they had paid 10% of the disputed taxes while filing the appeal and that the same may be given credit, 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 25.10.2023 is set aside.

b) The petitioner shall deposit 10% of the disputed taxes 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 to be paid. The assessing authority shall then intimate the balance amount out of 10 % of disputed taxes 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, 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 is not complied or objections are not filed within the stipulated period, four (4) 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, the connected miscellaneous petitions are closed.

09.01.2025

Index : Yes/ No
Neutral Citation: Yes/No

kas

To.

The Deputy Commercial Tax Officer
No.32, Integrated Commercial Taxes
Elephant Gate Bridge Road
Vepery, Chenai 600 003

MOHAMMED SHAFFIQ, J.

kas

W.P. No.585 of 2025
and W.M.P. Nos.712 and 713 of 2025

09.01.2025