IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2025

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.817of 2025
and
W.M.P.Nos.1001 & 1002 of 2025

Tvl. Vijay Gowtham Engineering,
rep., by its partner Ravi Gurunathan,
No.211/a, RS Road Indira Nagar, Reddiyarpalayam,
Athipattu, Chennai-600 120.

... Petitioner

Vs.

The Assistant Commissioner,
GST & Central Excise, Ponneri Division,
R-40, A-1, 100 Feet Road,
Mogappiar, Chennai-600 037. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the respondent in his Order-in-Original No.65/2024-GST(AC) in DIN No.20240359XL0000440485 dated 28.02.2024 and Summary of the order in Form GST DRC 07 in reference No.ZD330524023766F dated 05.05.2024 and quash the same.

For Petitioner : Mr.P.R.Kumar for Mr.T.V.Ganesh and others

For respondents : Mr.K.S.Ramaswamy
Senior Standing counsel

ORDER

The present writ petition is filed challenging the impugned order passed by the respondent dated 28.02.2024 relating to the assessment year 2018-19.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in Works Contract Services and Dealers in Civil Works materials. During the relevant period 2018-2019 the petitioner had filed its returns and paying the appropriate taxes. During the scrutiny of the returns filed by the petitioner, it was noticed that there was discrepancies between GSTR 3B and 2A and excess claim of ITC. A notice under ASMT-10 dated 02.03.2023 followed by a notice in Form DRC 01A was issued to the petitioner on 07.07.2023, to which, the petitioner had submitted his reply vide letter dated 05.03.2024 and thereafter, a notice in Form DRC 01 dated 18.12.2023 was issued to the petitioner. The petitioner filed his reply vide letter dated 05.03.2024. On considering the objections by the petitioner, discrepancies between GSTR 3B & 2A in relation to IGST was dropped. However, the mismatch between GSTR-3B and 2A with regard to SGST and CGST was confirmed vide impugned order dated 28.02.2024. It is against the above order of assessment that the present writ petition is filed on the ground that there is violation of principles of natural

justice.

2.1. It is 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, between GSTR 3B and 2A under CGST and SGST Act respectively.

3. 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.

4. 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 Senior Standing Counsel appearing for the respondent does not have any serious objection.

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

a) The orders impugned herein are 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.

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

20.01.2025

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

To:

The Assistant Commissioner,
GST & Central Excise, Ponneri Division,
R-40, A-1, 100 Feet Road,
Mogappiar, Chennai-600 037.

MOHAMMED SHAFFIQ, J.

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