

W.P.No.1208 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.1208 of 2025

and

WMP.Nos.1452 & 1453 of 2025

JMJ Silvers & MJJ Jewellers,
Now known as NM Silvers
Represented by its Managing Partner,
N.Murali,
330/2, Mayya Gounder Street,
Salem, Tamil Nadu – 636 004.

Vs.

Petitioner

The State Tax Officer,
Inspection – 6
Station: Room No.218, 2nd Floor,
Integrated Commercial Taxes Building,
Pitchards Road, Hasthampatti,
Salem – 636 007.

...

Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari calling for the records on the files of the respondent herein in GSTIN/33AAQFN7937H1ZS/2020-21 in FORM GST DRC-07 in order Ref No.ZD330224173232V proceedings dated 28.02.2024 and quash the same.

For Petitioner

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Mr.A.P.Karventhan
for Siri Chandana K

For Respondent

...

Mr.C.Harsha Raj
Additional Government Pleader

ORDER



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The present Writ Petition is filed challenging the impugned order passed by the respondent dated 28.02.2024 relating to the assessment year 2020-21 on the premise that the impugned orders are made in violation of principles of natural justice.

2. The petitioner is engaged in the business of sale of jewelry and is registered under the CGST and TN GST Act. During the relevant period 2020-21, the petitioner filed its returns and paid the appropriate taxes. There was an inspection of the petitioner's place of business on 14.09.2023 on the basis of the authorization letter issued in GST INS.SL.No.142/23-24 by the Joint Commissioner (ST), Salem Intelligence Division, Salem – Authorization for Inspection dated 14.09.2023. During the course of such inspection, the following defects were noticed;

- i) Mismatch between GSTR-3B and GSTR-2A
- ii) Violation of Rule 86(B)
- iii) Non Reversal of ITC on Credit Note Received
- iv) Blocked Credit /Ineligible ITC under Section 17(5) of TNGST Act 2017
- v) Difference between GSTR-9 Vs Profit and Loss Account

2.1. Pursuant thereto, a Notice in Form GST DRC-01A was issued on



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30.11.2023, followed by a show cause notice in GST DRC-01 dated 08.01.2024. However, the petitioner had neither filed its reply nor paid the appropriate taxes. Hence, the impugned order came to be passed, confirming the proposal.

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 was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that he may be granted one final opportunity before the adjudicating authority to put forth their



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objections to the proposal, to which, the learned Additional Government Pleader

appearing for the respondent does not have any serious objection.

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

- a) The impugned order dated 28.02.2024 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



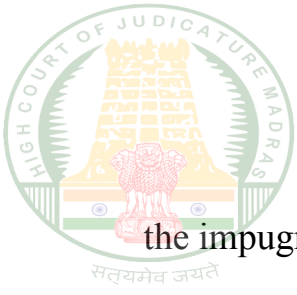
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balance sums, if any, to be paid for compliance with the direction of payment of 25% of the disputed taxes, after deducting the sums already paid and payment by the petitioner of the balance amount, if any, on intimation in compliance of the above 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,



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the impugned order of assessment shall stand restored.

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

Speaking (or) Non Speaking Order

Index : Yes/ No

21.01.2025

Neutral Citation: Yes/No

To

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MOHAMMED SHAFFIQ, J.

sms



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