IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.10986 of 2021
&
W.M.P.No.11627 of 2021
(Through Video Conferencing)

M/s.Cheran Steel Rolling Mills,
342/2, Mettupalayam Road,
Coimbatore - 641 029,
Represented by its Partner
D.Mohan. ...Petitioner

Vs

The Assistant Commissioner (ST) (Intelligence),
(Adjudication-II),
Coimbatore - 641 018. ...Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the Respondent in No.GSTN33AABFC2952Q1ZA/2017-18 dated 29.01.2021, quash the same.

For Petitioner : Mr.J.Shankarraman

For Respondent : Ms.Amirta Dinakaran
Government Advocate

ORDER

The petitioner has challenged the impugned order dated 29.01.2021. It is submitted that the office of the 1st Joint Commissioner (ST) (Intelligence), State Tax Officer-II, Coimbatore-18 issued the show cause notice dated 09.11.2020 to the petitioner and adjudicated the same which has resulted in a biased order as the Authority issuing notice became the judge of his own cause and therefore the impugned order dated 29.01.2021 was bad in law and consequently the impugned order passed by the respondent was liable to be quashed.

2.It is submitted that though the respondents has partly dropped the demand proposed in the said show cause notice, the learned counsel for the petitioner would however submit that after issue the show cause notice dated 09.11.2020, statements were obtained from some of the suppliers of the petitioner after personal hearing was held and thus there is a manifest violation of principles of natural justice as the impugned order was passed without giving adequate opportunity to either rebut those statements or cross examine the persons who gave such statements against the petitioner. He therefore submits that the said exercise resulted in an arbitrary exercise of powers even if it is assumed of the respondent was competent to issue the show cause and also adjudicate the dispute.

3.He therefore submits that the petitioner should have been given an opportunity to cross examine the persons from whom statement were obtained after the issue of show cause notice. It is further submitted that the petitioner did not get adequate opportunity to cross examine and to file additional reply and if another opportunity is given to the petitioner, the petitioner will be able to substantiate, that there is no case is made out for confirming a demand of Rs.51,09,314/- (25,54,657 + 25,54,657) as CGST and SGST and a penalty of Rs.11,19,430/- (5,59,715 + 5,59,715).

4.It was further submitted that the show cause notice itself was issued when the entire country was reeling under lockdown due to Covid - 19 Pandemic and the petitioner had also closed down the unit. He further submits that the Chartered Accountant/Auditor of the petitioner's application was also indisposed due to Covid-19 and therefore the petitioner could not make adequate submissions before the respondent to justify the input tax credit availed on the strength of various invoices based on which the petitioner filed return of GSTR 1. He therefore submits that if an opportunity is given to the petitioner, the petitioner will explain the facts clearly to the respondent.

5.Defending the impugned order, the learned Government Advocate for the respondent submits that the petitioner has an alternate remedy before the Appellate Commissioner under Section 107 of the TNGST Act, 2017. She further submits that the State Tax Officer-II, Adjudication Cell, Office of the Joint Commissioner (ST), (Intelligence), Coimbatore-18 was a competent authority and proper officer for the purpose of Chapter XV of the SGST Act, 2017. It is submitted that there was a proper delegation vide Circular No.72/2019-TNGST (RC No.26/2019/A1/Taxation) dated 31.05.2019 which has authorized the respondent to issue show cause notice.

6.It is submitted that as per the above, the officers working in the Intelligence wing are permitted the exercise the powers vested under Section 62, 63, 64, 73 or 74 of the TNGST Act, 2017. It is therefore submitted that the jurisdiction of the State Tax Officer-II of the show cause notice cannot be challenged. He further submits that admitted facts of the case is that after filing GSTR I the petitioner failed to file GSTR 3B and therefore the grievance of the petitioner was of no significance.

7.That apart, it is submitted that as against the proposed demand of Rs.62,80,454/- the respondent has dropped a substantial demand and has confirmed a sum of Rs.51,09,314/-. It is submitted that the petitioner has failed to file a document to substantiate that the petitioner was entitled to input tax credit for the entire amount covered by Defect No.3 for a sum of Rs.22,27,543/-. Similarly, it is submitted that as far as Defect No.6 regarding circular/receipt of a reciprocal transaction out of the proposed demand of Rs.7,61,107/- the respondent has also dropped partially and demanded only a sum of Rs.5,49,715. It is submitted that the petitioner at best can be allowed to file a Statutory Appeal in terms of the Section 107 of the TNGST Act, 2017.

8.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent and perused the order passed by the respondent and the show cause notice issued by State Tax Officer-II.

9.There is a proper delegation of power in terms of Section 74 of the TNGST Act, 2017 in as much the Commissioner has a proper circular has been issued whereby there is a proper delegation of powers to issue show cause notice and adjudicate the disputes vide circular No.72/2019-TNGST (RC No.26/2019/A1/Taxation) dated 31.05.2019.

10.Therefore, challenge to the impugned order based on the aforesaid show cause notice to that extent, has to fail. However, there is merits in the second submissions of the learned counsel for the petitioner that the respondent has relied upon the statement of several persons after the issue of the show cause notice to the petitioner while passing the impugned order.

11.Considering the fact that, after the issue of the show cause notice dated 09.11.2020 the officer has recorded the statement from few suppliers on 06.01.2021 before passing the impugned order, the procedure adopted while adjudicating the show cause notice was clearly in the violation of principles of natural justice in as much as the petitioner had no effective opportunity to counter to the same. Considering the same, the impugned order is therefore liable to be quashed to the extent amount of tax (CGST + SGST) and the penalty has been confirmed in the impugned order under the provisions of the TNGST Act, 2017. The case is therefore remitted back to the respondent for pass a fresh order to the extent the demand has been confirmed.

12.The respondent shall also furnish a copy of the statement relied upon the post facto after the issue of a show cause notice dated 06.01.2021 from various suppliers based on which the impugned demand has been confirmed within 15 days from the date of receipt of a copy of this order. The petitioner is also given an opportunity to file a reply to substantiate the defence to justify the input tax credit claimed under the provisions of the CGST Act, 2017 and TNGST Act, 2017 and the rules made thereunder.

13. The impugned order stands quashed and the case is remitted back to the respondent to pass a speaking order within a period of 45 days from the date of receipt of a copy of this order.

14.Accordingly, this writ petition stands disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (ST) (Intelligence),
(Adjudication-II),
Coimbatore - 641 018.

+1cc to the Special Government Pleader (Taxes) S.R.No.61298

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&
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GJ(CO)
RGA(11/01/2022)