IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.7977 of 2022
and
W.M.P.No.7965 of 2022

M/s.Amutha Metal Industries,
Rep. By its Proprietor Amuthavalli …. Petitioner

-Vs-

1. The Deputy State Tax Officer,
Tondiarpet Assessment Circle,
Room No.217, II Floor,
Integrated Commercial Taxes Building,
Survey No.1275/3, No.32, Elephant Gate Bridge Road,
Chennai-600 003.

2. The Assistant Commissioner Audit & Review,
Office of the Deputy Commissioner,
Zone-II, Chennai-600 003. …. Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned proceedings of the 1st respondent in GSTIN:33ARHPA1055B1ZP/2019-20 dated 09.12.2021 and quash the same and direct the 1st respondent to allow the petitioner to adjust the credit amount of Rs.40,505/- which was blocked and then pass further orders as this Court may deem fit and proper in the facts and circumstances of the case.

For Petitioner : Mr.S.Ravee Kumar

For Respondents : Mr.R.Siddharth,
Government Advocate

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the impugned proceedings of the 1st respondent in GSTIN:33ARHPA1055B1ZP/2019-20 dated 09.12.2021 and quash the same and direct the 1st respondent to allow the petitioner to adjust the credit amount of Rs.40,505/- which was blocked and then pass further orders.

2. The petitioner is a dealer under the TNGST regime (in short 'the Act'). In respect of Assessment Year 2019-2020, a notice was issued in Form GST ASMT-10, which should have been issued under Section 74(5) of the Tamilnadu Goods and Services Tax Act. The said notice dated 01.11.2021, though had been replied by the petitioner on 24.11.2021, thereafter, the order straight away had been passed on 09.12.2021 under Section 73(1) of the Act.

3. In this context, the issue has already been settled in numbers of cases, where, as per the Scheme under Section 74 of the act, first notice should be given or option should be given to the dealer under Section 74(5) of the Act and if the option is not utilised or responded by the petitioner dealer, then only further notice under Section 74(1) should be issued, thereafter, on receipt of reply or otherwise and considering the same, after giving personal hearing, the Revenue should continue to proceed with Section 74 proceedings.

4. Here in the case in hand, in the notice dated 01.11.2021, it is wrongly mentioned as Form GST ASMT-10 and that has been replied on 24.11.2021. Thereafter, straight away the order under Section 74(1) was issued on 09.12.2021. Therefore, it is a clear case where procedure contemplated under Section 74 especially, under Section 74(5) has not been complied with. Therefore, on that ground, this Court is inclined to set aside the order and remand the matter back to the respondents.

5. In this regard, the arguments advanced by the learned counsel for the petitioner as well as the learned Government Advocate appearing for the respondents were heard and considered.

6. Since the issue has already been decided in number of cases, this Court, in the light of the said orders, is inclined to dispose of this Writ Petition with the following order.

- That the impugned order is set aside and the matter is remanded back to the respondents for reconsideration and while reconsidering the same, the procedure contemplated especially in the context of Section 74(5) and 74(1) should be strictly followed by giving an opportunity to the petitioner including personal hearing.
- Thereafter, it is open to the respondents to pass orders on the same on merits and in accordance with law.

7. With these observations and directions, this Writ Petition is disposed of. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Anu/KST

To

1. The Deputy State Tax Officer,
Tondiarpet Assessment Circle,
Room No.217, II Floor,
Integrated Commercial Taxes Building,
Survey No.1275/3, No.32, Elephant Gate Bridge Road,
Chennai-600 003.

2. The Assistant Commissioner Audit & Review,
Office of the Deputy Commissioner,
Zone-II, Chennai-600 003.

+1cc to Mr.S.Ravee Kumar, Advocate, S.R.No.22551
+1cc to the Special Government Pleader(Taxes), S.R.No.22872

W.P.No.7977 of 2022

RK(CO)
SB(19/05/2022)