IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2023

CORAM :

The HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.2170 of 2023
and
W.M.P. Nos.2249 and 2252 of 2023

M/s.Hind Aluminium Company,
Rep. by its Proprietor
M.Gnanasekar .. Petitioner

vs

1. The Assistant Commissioner (ST)
Hosur (North - I) Assessment Circle,
Integrated Commercial Taxes Building,
Hosur - 635 109.

2. The Assistant Commissioner, RAL
Hosur (North) - Admin,
Hosur - 635 109. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in GSTIN : 33AMKPG7664E1Z1/2017-18, dated 04.01.2023, the Order passed under section 74 in Reference No.ZD330123011744Z, dated 5.1.2023 and the "Summary of the Order" in Form GST DRC-07, dated 05.01.2023 issued in Reference No.ZD330123011744Z and quash all the impugned proceedings as passed contrary to the procedures contemplated under the provisions of the CGST, 2017 & TNGST, 2017 and also in violation of the principles of natural justice and further direct the first respondent to consider the objections dated 08.12.2022 filed by the petitioner and pass a fresh assessment order in accordance with law after granting reasonable opportunity to the petitioner.

For Petitioner	:	Mr.P. Rajkumar
For Respondents	:	Mr.C. Harsha Raj, Addl. Government Pleader

ORDER

By consent of both parties, this writ petition is taken up for final disposal in the admission stage itself.

2. Mr.C. Harsha Raj, learned Additional Government Pleader accepts notice for the respondents.

3. The petitioner has challenged the impugned order dated 04.01.2023 passed under Section 74 of the Tamil Nadu Goods and Services Tax Act, 2017 on the following grounds :-

a) by total non application of mind to the reply sent by the petitioner, the impugned order has been passed.

b) the show cause notice is dated 22.11.2022 and the petitioner was directed to reply to the same by 23.11.2022. The petitioner had also sent a reply on 23.11.2022 requesting the respondents to grant further time to submit his detailed reply on the ground that the time given is too short.

c) the reply dated 08.12.2022 submitted by the petitioner has not been considered by the respondents under the impugned order.

d) the show cause notice issued by the respondent is bald and cryptic. It does not inform to the petitioner about the details of the violations committed by them as per the provisions of Section 74 of the TNGST Act, 2017, instead the respondent has simply extracted the ingredients of Section 74 of the Act and has issued the show cause notice.

4. Under the impugned order passed under Section 74 of the TNGST Act, 2017, the petitioner has been levied with penalty for claiming input tax credit based on bogus tax invoices / debit notes.

5. The learned counsel for the petitioner drew the attention of the Court to the relevant documents filed in support of the aforementioned contentions.

6. On perusal of the same, this Court is of the considered view that the grounds raised by the petitioner stating that the petitioner has not been granted sufficient opportunity to send the reply to the show cause notice, which is dated 22.11.2022, has to be accepted.

7. In the said show cause notice, dated 22.11.2022, the petitioner

was called upon to submit his reply by 23.11.2022. The petitioner has also sought time to submit a detailed reply in their communication, dated 24.11.2022 to the respondents, which has also been uploaded in the web portal of the respondents. The proof for the same has also been filed as a document along with this writ petition. A detailed reply was also sent by the petitioner to the show cause notice on 08.12.2022 and the same has also been uploaded in the web portal of the respondents. The proof for the same has also been filed as a document. However, under the impugned order, the reply dated 08.12.2022 has not been considered by the respondents.

8. On a prima facie consideration, the show cause notice sent to the petitioner by the respondents is also bald and cryptic and the exact details of the violations committed by the petitioner have not been disclosed in the said show cause notice. The show cause notice has simply extracted the ingredients of Section 74 of the Act but the same does not disclose the details of the violations committed by the petitioner.

9. For the foregoing reasons, this Court is of the considered view that the impugned order has been passed by total non application of mind

to the reply dated 08.12.2022 submitted by the petitioner and therefore, the impugned order has to be necessarily quashed and the matter will have to be remanded back to the respondents for fresh consideration on merits and in accordance with law after affording a fair hearing to the petitioner, including granting them the right of personal hearing.

10. In the result the impugned order dated 04.01.2023 passed by the 1st respondent is hereby quashed and the consequential orders dated 05.01.2023 are hereby quashed and the matter is remanded back to the 1st respondent for fresh consideration on merits and in accordance with law, after affording a fair hearing including granting them the right of personal hearing.

11. The 1st respondent is directed to pass final orders, on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

12. With the aforesaid directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

27.01.2023

Index:Yes/No
Neutral Citation:Yes/No

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ABDUL QUDDHOSE, J.

vsi2

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