IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.18351 of 2023
and
W.M.P.Nos.17552 & 17555 of 2023

MOHANAN GNANSEKAR .. Petitioner

vs

The State Tax Officer,
Hosur (NORTH - I) Assessment Circle,
Office of The Assistant Commissioner,
Hosur North, I Assessment Circle,
Integrated Commercial Taxes Building,
Second Floor, Hosur - 635 109. .. Respondent

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 respondent in Order No.33AMKPG76641E1Z1 dated 12.4.2023 in Form GST DRC-07 and the connected orders passed under section 74 in Reference No. ZD330423053554M dated 12.4.2023 and the summary of the order passed in Form GST DRC- 07 dated 12.04.2023 in Reference No. ZD330423053554M and quash all the impugned proceedings as passed contrary to the procedures contemplated under the provisions of the CGST Act 2017 and TNGST Act 2017 and also passed in violation of the principles of natural justice and further direct the respondent to consider the objections dated 9.3.2022 filed by the Petitioner and pass a fresh assessment order in accordance with law after granting

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

ORDER

Mr.Prashanth Kiran, learned Government Advocate, accepts notice for the respondents and is armed with instructions to enable final disposal of this matter even at this juncture.

2. The petitioner is a sole proprietary, a registered dealer, on the file of the respondent State Tax Officer, Hosur North I Assessment Circle, in terms of Tamil Nadu Goods and Service Tax Act, 2017 (in short, 'Act'). The petitioner had challenged an order of assessment passed under the provisions of Section 74 of the Act in GST DRC – 07 dated 12.04.2023.

3. The grounds raised and argued by learned counsel for the petitioner are that the impugned order of assessment is grossly in violation of principles of natural justice. According to the petitioner, the respondent had initially received a notice under DRC

01A dated 23.01.2023. That notice issued by the same officer had computed tax, interest and penalty under the provisions of the CGST and SGST Act for the period August, 2017 to September, 2017 and had called upon the petitioner to remit the same on the ground that the demand related to fraudulent availment of Input Tax Credit (ITC) from a non-existence supplier.

4. The notice stated that if the demand as ascertained was not remitted, a show-cause notice will be issued under Section 74(1) for assessment. The annexure to DRC 01A set out the name of the supplier that was alleged to be non existent as *M/s. Baby Suba and Company* as well as TIN number of that supplier, accompanied by a tabulation containing the invoice numbers, dates and value of the transaction inter se with quantification of the tax and interest payable thereupon.

5. The petitioner was admittedly in receipt of notice under Section DRC 01 A and disputed the liability. The objections of the petitioner were communicated to the respondent by way of reply dated 24.01.2023, whereunder the petitioner requests that the notice be withdrawn. Thereafter, the petitioner was in receipt of a show-cause notice dated 31.01.2023 under Section 74(1) of the

Act.

6. Section 74 deals with determination of tax not paid or short paid or erroneously refunded or availment of or utilization of ITC wrongly by virtue of fraud or wilful misstatement or suppression of fact. One of the points raised by the petitioner is that the show-cause notice does not specifically refer to any transaction alleged to have been connected to the erroneous availment / utilization of ITC. This would, by itself, according to petitioner, vitiate the proceedings.

7. I do not agree for the reason that the show-cause notice issued under Section 74 is evidently a continuation of the proceedings initiated under notice in DRC 01A dated 23.01.2023. In fact, that notice under DRC 01A has itself been issued under threat of further proceedings under Section 74 and thus, the connection or nexus, in my considered view, has been clearly established. The annexures filed along with DRC 01A reveal the identity of the allegedly non-existent suppliers as M/s.Baby Suba Company as well as the details of transactions inter se and thus, the petitioner is well aware of the specifics of the proposal and is conscious of the fact that the show-cause notice relates to, and is in continuation of the

earlier proceedings. The procedure adopted aligns with the statutory scheme of the Act as well.

8. The petitioner, by way of interim reply dated 09.02.2023, seeks some time to file objections to the show-cause notice. The reply which has been submitted in the format prescribed in Form GST DRC 06 in terms of Rule 142 (4) of the Rules, and contains in serial number 7, an option for personal hearing which the petitioner has marked as NIL, thus declining the offer for personal hearing.

9. Further, the reply also makes it clear that the petitioner was aware of the fact that the show-cause notice related to purchases made during the month of August – September, 2017 as is clear from notice in DRC 01A. In fine, the petitioner seeks a month's time to peruse the old records and file a suitable reply. This would also support the position that the petitioner was well aware of the fact that show-cause notice was in continuance of the notice under DRC 01A.

10. On 19.03.2023, a detailed reply is filed by the petitioner wherein at paragraphs 1 to 3, the petitioner refers to the fact that

the notice under Section 74 did not contain any specific proposal for response but merely extracts the provisions of Section 74 of the Act. In this the petitioner is correct and as a matter of procedure the respondents must enclose the DRC 01A and the enclosures with the show-cause notice issued under Section 74 to enable an effective response to be made by the assessee at the stage of Section 74 proceedings.

11. However, the reply dated 08.03.2023, at paragraph 5, reveals that the petitioner was well aware of the fact that the show-cause notice relates to the purchases made from M/s. Baby Suba and Company, Chennai. Thus, even at this stage, the petitioner has revealed clearly its mind and the knowledge that the proceedings related to purchases from M/s. Baby Suba and Company.

12. That apart, in written instructions dated 19.06.2023, a copy of which has been supplied to the learned counsel for the petitioner as well, the officer states that the notices issued on 31.01.2023 and 09.02.2023 had been accompanied by details of invoices relating to purchases stated to have been made from M/s. Baby Suba and Company, Chennai. This was followed by a summary of show-cause notice in Form GST DRC 01 in terms of

Rule 142 (1), dated 31.01.2023.

13. These two events reinforce categorically, to my mind, that the petitioner was well aware of the issue that had been raised against it, and that the notices were sufficiently elaborate on the points raised for response. In the interests of completion, paragraph 5 of reply dated 08.03.2023 is extracted below:-

> *"Without prejudice to the above submissions, we would like to state that we have effected purchase only from registered dealers including the purchases made from of supplier M/s.Baby Suba & Co, Chennai who was an existing person when we effected purchases from them during the period from August 2017 & September 2017 and that they had valid registration under the CGST Act, 2017 and TNGST Act, 2017. The purchases from the above said dealer was supported by the following documents:*
> *i. Sale invoices raised by M/s.Baby Suba & Co., for supply of aluminium scrap and aluminium ingots.*
> *ii. The payments for the above purchases were through bank transfers and so supported by the Bank statements showing the payments made by us through Karur Vysya Bank, Ambattur.*
> *iii. The goods were supplied by M/s.Baby Suba & Co., Chennai at our business place in the goods vehicle and details of goods vehicle are also mentioned in the invoices raised by the supplier M/s.Baby Suba & Co.*
> *iv. The purchase cost of the aluminium scrap and aluminium ingots includes the transport cost.*
> *v. The sales effected by M/s.Baby Suba & Co., Chennai were reported by them in their GSTR-1 & GSTR 3B.*

vi. We have also reported our sales and our purchases in our GSTR 1 and GSTR3B and availed input tax credit.
The above documents would be filed before you at the time of personal hearing."

14. Thus, the petitioner states that (i) it is aware of the issue raised relating to allegedly fraudulent purchases made from M/s.Baby Suba and Company, Chennai and (ii) further, that it was in possession of documents to establish the purchases. In the conclusion of paragraph 5, the petitioner states that supporting documents will be filed at the time of personal hearing. Paragraph 6 relates to the proposal for levy of penalty to which the petitioner objects stating that there was no statutory provision mentioned in relation to which penalty is sought to be levied.

15. This was followed by a reminder from the respondent 31.01.2023 when he erroneously states that no reply has been received to the show-cause notice. The date of personal hearing is fixed at 05.04.2023. Upon receipt of the reminder, the petitioner has visited the premises of the respondent and brought to his notice the response already filed. With this, it is clear that the reply dated 08.03.2023 has been brought to the notice of the assessing officer, that includes the explanation tendered for purchases. The officer thus awaited the documents cited at paragraph 5 of the reply that

were never received.

16. Another critical factor in this matter is that despite the personal hearing having been fixed on 05.04.2023, there is admittedly no appearance of the petitioner on that date. Thus, the petitioner has forfeited the benefit extended to it by way of personal hearing.

17. It is under these circumstances, that the impugned order has come to be passed in GST DRC 07 dated 12.04.2023 wherein, in the absence of any supporting materials as promised by the petitioner and also no appearance on 05.04.2023, when the matter was fixed for personal hearing, the assessing authority has proceeded to confirm the proposals.

18. I see no legal infirmity in the procedure followed by the assessing authority in passing the impugned order. It is incumbent upon an assessee to cooperate in the course of assessment proceedings and provide effective responses to the show-cause notice as well as avail of the opportunity for personal hearing. The petitioner herein has done neither. In such circumstances, the impugned order of assessment is confirmed and this writ petition is

dismissed as are the connected miscellaneous petitions, leaving the petitioner to seek available alternate remedies in accordance with law. No costs.

20.06.2023

Index:Yes
Neutral Citation:Yes
ssm

To:

The State Tax Officer,
Hosur (NORTH - I) Assessment Circle,
Office of The Assistant Commissioner,
Hosur North, I Assessment Circle,
Integrated Commercial Taxes Building,
Second Floor, Hosur - 635 109.

DR. ANITA SUMANTH,J.

ssm

W.P.No.18351 of 2023

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