IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.No.22916 of 2023
and
W.M.P.Nos.22409 and 22411 of 2023

M/s.Madhu Metal Works,
Represented by its Proprietorix,
No.22/12, Vijayalakshmi Nagar,
Kallikuppam, Ambattur,
Chennai – 600 053. ... Petitioner

Vs

The Assistant Commissioner (ST),
Review and Appeal, Zone – III,
Office of the Deputy Commissioner (ST),
Integrated Building for Commercial Taxes Department,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai – 600 003. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the Notice of Intimation dated 09.05.2023, by the respondent herein and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

ORDER

Mr.V.Prashanth Kiran, learned Government Advocate takes notice on behalf of the respondent.

2. The petitioner is aggreived by the imugned Notice of Intimation dated 09.05.2023, issued to the petitioner under Rule 86-A(1)(a) and (c) of the TNGST Rules, 2017. By the impugned order, credit for a sum of Rs.37,18,106/- has been locked on account of the information gathered by the Intelligence Department of the respondent that the purchases made by the petitioner from Tvl.Agni Traders was bogus and that the said entity was a non-existent or not conducting any business activities in the address for which registration was obtained and have fraudulently availed and passed on ineligible Input tax credit to numerous taxpayers.

3. The learned counsel for the petitioner has placed reliance on the letter of the Central Board of Indirect Taxes and Customs dated

02.11.2021 bearing reference No.CBEC-20/16/05/2021-GST and a recent decision of the Delhi High Court in ***M/s.Balaji Exim*** Vs. ***Commissioner, CGST and others*** in W.P.(C).No.10407 of 2022 dated 10.03.2023.

4. *Prima facie*, the views of the Board regarding Rule 86-A(1)(a) and (c) of the Rules appears to be in order. The provisions do not permit the registered person to avail input tax credit on invoices or debit notes without actually receiving goods or services or both. Only Credit that is validly availed can be utilised for discharging the tax liability.

5. Considering the above, I am inclined to dispose this writ petition at the time of admission by permitting the petitioner to give a representation to the impugned Notice of Intimation dated 09.05.2023, within a period of 15 days from the date of receipt of a copy of this order.

6. The respondent shall consider and dispose the same on merits and in accordance with law, within a peirod of two weeks thereafter. In case the Credit was wrongly availed by the petitioner, the respondent

shall endeavour to issue a Show Cause Notice as the case may be either under Sections 73 or 74 of the Act and decide the issue finally as expeditiously as possible on merits and in accordance with law.

7. This writ petition stands disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

04.08.2023

Index: Yes/ No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation : Yes/No
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To

The Assistant Commissioner (ST),
Review and Appeal, Zone – III,
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No.32, Elephant Gate Bridge Road,
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C.SARAVANAN,J.
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