IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25393 of 2023
and
W.M.P.Nos.24798 and 24799 of 2023

M/s.Lavanya Metal Process,
Represented by its Partner M.Parthiban,
No.595/1A1B, 595 2A2,
Thirumudivakkam, Kancheepuram,
Tamil Nadu - 600 044. ... Petitioner

Vs.

The State Tax Officer,
Thirumudivakkam Assessment Circle,
Zone IX, Integrated Commercial Taxes
Department Building,
(South Tower), Block.19, T.S.No.2,
3rd Floor, Room No.344,
Nandanam, Chennai - 600 035. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records of the respondent in the impugned Order Reference No.ZD330323026344W dated 06.03.2023 and quash the same as it has been passed in violation of principles of natural justice.

For Petitioner : Ms.Sharanya Vijay.K

For Respondent : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

ORDER

Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate takes notice on behalf of the respondent.

2. The petitioner has challenged the impugned order Reference No.ZD330323026344W dated 06.03.2023 passed by the respondent.

3. It is the submission of the learned counsel for the petitioner that the impugned order has been passed in gross violation of principles of natural justice as the impugned order preceded a Show Cause Notice dated 18.01.2023 but has concluded the proceedings by holding that the petitioner had not participated in the personal hearing fixed on 10.01.2023 at 2.00 p.m. pursuant to a notice dated 03.01.2023.

4. This writ petition is defended by the learned Government Advocate for the respondent stating that the petitioner was issued with a notice in Form GST DRC-01A on 10.11.2022. On 03.01.2023, a notice of personal hearing

was issued to the petitioner. The petitioner was called upon to appear on 10.01.2023 at 2.00 p.m. The petitioner however failed to appear for personal hearing in response to notice in Form GST DRC-01A dated 10.11.2022.

5. It is submitted that since the petitioner neither replied to Form GST DRC-01A notice nor appeared for personal hearing on 10.01.2023, a further notice in Form GST DRC-01 was issued to the petitioner on 18.01.2023.

6. It is further submitted that the issue that arose for consideration in the said Show Cause Notice pertains to denial of Input Tax Credit availed on the strength of the invoices issued by the dealer namely Tvl.Sri Ganesh Trading.

7. It is further submitted that the registration of the said dealer was cancelled based on the inspection carried out by the Department and that the said supplier was a bill trader facilitating illegal availing of Input Tax Credit.

8. By way of rejoinder, the learned counsel for the petitioner would submit that the said dealer had discharged the tax liability on the invoices

issued to the petitioner and therefore the credit cannot be denied in the impugned order.

9. It is submitted that unless the petitioner was given an opportunity of being heard, the question of confirming the demand cannot be sustained.

10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

11. The petitioner was issued with a Show Cause Notice dated 18.01.2023 in Form GST DRC-01. The petitioner has also replied to the same on 16.02.2023. Along with the reply, the petitioner has requested for a personal hearing while uploading the reply in Form GST DRC-06.

12. In the main body of the reply also, the petitioner has requested for personal hearing before passing any orders against the petitioner.

13. The impugned order has merely confirmed the demand that was proposed in the Show Cause Notice dated 18.01.2023 in Form GST DRC-01

as the petitioner had failed to participate in the personal hearing fixed on 10.01.2023 pursuant to a notice issued in Form GST DRC-01A on 10.11.2022.

14. The decision of the Hon'ble Supreme Court in **M/s.Dharampal Satyapal Limited** Vs. D**eputy Commissioner of Central Excise, Gauhati and others**, Civil Appeal Nos.4458-4459 of 2015 dated 14.05.2015 stating that there cannot be any straight jacket formula as far as the violation of principles of natural justice is concerned, cannot be applied to the facts of the case. The decision of the Hon'ble Supreme Court *prima facie* cannot be applied to the facts of this case.

15. To take such an extreme view as was contended by the learned Government Advocate for the respondent by applying the ratio therein in the context of GST law would amount to dilution of the safeguards under the statute. The legislature has itself provided for safeguards under the statute at each stage of the proceeding. Therefore, such safeguards cannot be diluted. Further, it would send a wrong signal and set an unhealthy trend resulting in confirmation of demand without giving personal hearing under the provisions

of the respective GST Acts if the Assessing Officer deems and considers that no useful purpose will be served by giving personal hearing to an assessee.

16. In view of the above observation and reasoning, the impugned order is quashed and the case is remitted back to the respondent to pass a fresh order on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

17. Needless to state, before passing such order, the petitioner shall be heard.

18. This Writ Petition is disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

30.08.2023

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

arb

To

The State Tax Officer,
Thirumudivakkam Assessment Circle,
Zone IX, Integrated Commercial Taxes
Department Building,
(South Tower), Block.19, T.S.No.2,
3rd Floor, Room No.344,
Nandanam, Chennai - 600 035.

C.SARAVANAN, J.

arb

W.P.No.25393 of 2023
and
W.M.P.Nos.24798 and 24799 of 2023

30.08.2023