IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.28304 and 28305 of 2023
and
W.M.P.Nos.27824, 27825, 27826 and 27827 of 2023

Sri Ganapathy Steels,
Represented by its Proprietor,
No.11/1 Thangammal Nagar,
Maniyakarampalayam,
Coimbatore – 641 006. ... Petitioner in both W.Ps

Vs

The Deputy State Tax Officer II (ST),
Saravanampatti West Circle,
Coimbatore. ... Respondent in both W.Ps.

Prayer in W.P.No.28304 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in his proceedings in GSTIN:33ACVPT0373N1ZV/2018-19, quash the order dated 27.06.2023.

Prayer in W.P.No.28305 of 2023: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in his proceedings in GSTIN:33ACVPT0373N1ZV/2019-20, quash the order dated 27.06.2023.

For Petitioner (in both W.Ps) : Mr.R.C.Ramani
Senior Counsel for
Mr.B.Raveendran

For Respondent (in both W.Ps) : Mrs.E.Ranganayaki
Special Government Pleader

COMMON ORDER

Mrs.E.Ranganayaki, learned Special Government Pleader takes notice on behalf of the respondent.

2.Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent.

3.In these two writ petitions, the petitioner has challenged the impugned Assessment order dated 27.06.2023 for the Assessment years

2018-2019 and 2019-2020. By the impugned order, the respondent has confirmed the demand proposed in DRC 01A and DRC 01 issued to the petitioner for the respective Assessment years seeking to demand the input tax credit availed by the petitioner on the strength of invoices raised by one M/s.C.A.Gowtham Steels.

4.The petitioner's case is that the same supplier has supplied the scrap steels MS scrap to the petitioner as also the petitioner's sister company namely M/s.Tarsun Steels India (P) Limited and similar notices were issued to both the petitioner and the said M/s.Tarsum Steels India (P) Limited on 07.07.2022 and 10.02.2023 respectively.

5.It is submitted that as far as the petitioner is concerned, by the impugned order, the respondent under state has confirmed that the petitioner had availed ineligible credit on the strength of invoices issued by the said M/s.C.A.Gowthan Steels, whereas, in the case of the petitioner's sister company concerned namely M/s.Tarsun Steels India (P) Limited, the Central Authority vide order dated 10.02.2023 bearing reference C.No.GEXCOM/AE/MISC/575/2022-AE have confirmed that on verification of the documents viz., purchase invoices, e-way bills, stock statement etc., which was found that the credit availed for a sum of Rs.86,25,650/- based on the said tax invoices of the said M/s.C.A.Gowtham Steels was found to be eligible and thus the proceedings initiated under Rule 86A(1)(a) of the TNGST Act, 2017 was dropped.

6.However, as far as the petitioner is concerned, the supplies made by the same supplier, the respondent has confirmed the demand vide impugned order dated 27.06.2023 for the respective Assessment years.

7.The learned counsel for the petitioner submits that the impugned order is perverse, as the Central Authority has confirmed that the supplier namely M/s.C.A.Gowthan Steels was in-existence and credit was allowed to the petitioner's sister company namely M/s.Tarsun Steels India (P) Limited, whereas, for similar supplies made by the same supplier, the credit has been denied stating that the supplier was not in existence. It is therefore submitted that the impugned order is liable to be quashed.

8.Defending the impugned order, the learned Special Government Pleader for the respondent on the other hand would submit that the impugned order is well reasoned and requires no interference. It is submitted that the petitioner has replied only intimation notice dated 07.07.2022. Thereafter, the petitioner was issued with DRC -01A and DRC-01 for the respective Assessment years on 18.07.2022 and 11.01.2023. However, the petitioner failed to participate in the personal hearing which was proposed to be held on 27.01.2023 and 17.03.2023.

9.That apart, the learned Special Government Pleader for the respondent would submit that the petitioner still has time to file Statutory Appeal under Section 107 of the CGST Act, 2017 . Therefore, on this count also the writ petitions are liable to be dismissed for alternate remedy.

10.That apart, it is further submitted that there are several disputed questions of fact, which are better left to be decided by the Authorities under the hierarchy of the respective GST enactments. It is further submitted that these writ petitions should be dismissed with liberty to the petitioner to work out the remedy before the Appellate forum.

11.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Special Government Pleader for the respondent.

12.Although the order passed by the respondent cannot be faulted as the petitioner has failed to respond to notice in DRC -01 dated 11.03.2023 issued for the respective Assessment years, the fact remains that the dispute pertains to input tax credit availed by the petitioner on the suppliers allegedly made by M/s.C.A.Gowtham Steels to the petitioner. A similar proceedings were initiated against the petitioner's sister company concerned namely M/s.Tarsun Steels India (P) Limited, who was also issued with a similar notice on 06.07.2022.

13.As far as petitioner is concerned, such notice was issued on 07.07.2022 by the respondent namely State Authority i.e., one day after the notice was issued to the said M/s.Tarsun Steels India (P) Limited by the Central Authority. As far as the said M/s.Tarsun Steels India (P) Limited is concerned, the Central Authority vide order dated 10.02.2023 bearing reference C.No.GEXCOM/AE/MISC/575/2022-AE has held as follows:-

> "This has reference to this Office letter to even No.dated 06.07.2022 with regard to verification of input tax credit of Rs.86,25,650/- (CGST-Rs.43,12,825/- + SCGST-Rs.43,12,825/-) availed by M/s.Tarsun Steels India (P) Limited, Tiruppur, during the periods from July 2017 to March 2021, based on tax invoices issued by M/s.C.A.Gowtham Steels, Coimbatore (GSTIN:33AGSPA0814C1Z2). <u>On verification of documents viz., Purchase invoices, e-way bills, stock statement, ledger accounts, bank statement etc., submitted by you vide your letter dated 12.10.2022, it is found that the above said ITC of Rs.86,25,650/- availed based on tax invoices issued by M/s.C.A.Gowtham Steels found to be eligible and thus the proceedings initiated in this regard is closed.</u>"

14.Whereas, in the case of the petitioner it has been concluded that the petitioner was not entitled to input tax credit based on the statement allegedly recorded from the proprietor of Tvl.C.A.Gowtham Steels namely Thiru Annadurai, recorded under Section 70 of the CGST/TNGST Act, 2017.

15.Considering the fact that the order has been passed in favour of the petitioner's sister company namely M/s.Tarsun Steels India (P) Limited, Court is inclined to set aside the impugned order and remits the cases back to the respondent to pass a fresh order on merits and in accordance with law. It is open for the respondent to pass a fresh order on merits after considering the aforesaid order of the Central Authority dated 10.02.2023. The petitioner is directed to file all the records before the Authorities.

16.These writ petitions stand disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

26.09.2023

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

The Deputy State Tax Officer II (ST),
Saravanampatti West Circle,
Coimbatore.

C.SARAVANAN, J.

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and
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