



WEB COPY



W.P.No.29554 of 2023
and W.M.P.No.29189 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.10.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.29554 of 2023
and W.M.P.No.29189 of 2023

Tvl.Ram Metals
Represented by its Proprietor,
Mr.Jogendar Prasad Gupta,
30/1, Moulana Steel Nagar,
Podanur Main Road, Kurichi Pirivu,
Kurichi, Coimbatore – 641 023.

... Petitioner

Vs.

1.The Assistant Commissioner (State Tax),
Podanur Assessment Circle,
Commercial Taxes Building,
Dr.Balasundaram Road,
Coimbatore -641 018.

2.Syndicate Bank,
Represented by its Branch Manager,
G.G.Complex, 81A Vivekananda Road,
Ramnagar, Coimbatore – 641 009.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus, to call for the



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records pertaining to the impugned letter bearing reference number 33AIVPG6956E1ZX dated 31.08.2023 issued by the 1st respondent and quash the same with consequential direction to the respondents not to proceed with the recovery proceedings.

For Petitioner : Mr.G.Derrick Sam

For R1 : Mr.V.Prashanth Kiran
Government Advocate (Tax)

ORDER

Mr.V.Prashanth Kiran, learned Government Advocate takes notice for the respondents. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2.This writ petition has been filed challenging the impugned letter bearing reference number 33AIVPG6956E1ZX dated 31.08.2023 issued by the 1st respondent and quash the same with consequential direction to the respondents not to proceed with the recovery proceedings.



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3.The learned counsel for the petitioner would submit that the 1st respondent without providing any opportunity of personal hearing and without following the procedure prescribed in Circular No.12 of 2022 dated 26.09.2022 had passed the impugned order. He would further submit that the petitioner has studied only 8th standard and therefore, he is not capable to peruse the notices and orders in the GST portal. In such circumstances, any other effective method under Section 169 of the CGST/TN GST Act, 2017 (hereinafter referred as 'the Act') ought to be followed by the 1st respondent. When the assessee is educated and corporate, effective communication can be achieved by sending the notices through e-mail or uploading the same in the GST portal. If the assessee is uneducated, operating a computer system is beyond his control, effective communication can be achieved only through other modes as per Section 169 of the Act. If computer knowledge is mandatory to do business, it would be an unwarranted restriction on the fundamental right under Article 19(1) (g).



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4.He would also submit that the petitioner has complied with the provisions of Section 16(2) of the GST Act 2017, before availing the ITC. The dual condition contemplated in Section 16(2) of the GST Act, 2017 is that the assessee should be in possession of a tax invoice issued by the supplier and should have received the goods or service or both. In the present case, the petitioner is a dealer in aluminum scrap and has received the goods in his premises and has all evidences to prove the receipt of the goods in his premises. The petitioner is also in possession of the invoices and the same were duly referred while filing the returns. The petitioner has paid the value of the goods along with GST and the transaction was also reflected in the GSTR-2A. Under such circumstances, the respondent ought to have decided the issue as per Circular 14/2022-TNGST dated 13.9.2022. However, the 1st respondent has issued two reminders dated 23.06.2023 and 26.06.2023 requesting the petitioner to submit reply to show cause notice dated 24.12.2021. The petitioner had also replied to the show cause notice vide GST DRC-06 dated 21.07.2023 and such reply can be considered under Section 161 of the CGST/SGST Act.



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5.He would submit that for the above reasons, the petitioner could not able to file an appeal within the stipulated time limit under Section 107 of the Act. Further, it would not be an effective remedy since the assessment proceedings are to be completed as per Circular 14/2022-TNGST 13.9.2022. Hence, the petitioner filed the writ petition.

6.Learned Government Advocate appearing for the 1st respondent opposed the contention of the petitioner.

7.As against the impugned order, the petitioner is having an efficacious appeal remedy before the Appellate Authority and without exhausting the same, the petitioner has come forward with the present writ petition. Now, the learned counsel for the petitioner after making his submission, has urged that it would be suffice if this Court grants liberty to the petitioner to file appeal before the Appellate Authority and workout his remedy.



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8.Considering the submissions made by the learned counsel for the petitioner, without advertng to the contention raised by the petitioner in the present writ petition and limited direction sought for by him, this Court grants liberty to the petitioner to file appeal against the impugned order within a period of 30 days from the date of receipt of a copy of this order. On such appeal being filed, the concerned Appellate Authority shall entertain the same without insisting upon the limitation aspect. It is open to the petitioner to raise all the issues that were raised before this Court including the refund of bank deposit, before the Appellate Authority, who shall decide the same in accordance with law and on merits.

9.With the above directions, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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KRISHNAN RAMASAMY.J.,
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