BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.06.2023**

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

W.P.(MD) No.6570 of 2023
and
W.M.P.(MD) Nos.6231 and 6233 of 2023

M/S.Sri Muthumalai Amman Hardwares,
represented by its Partner, M.Balan,
17/42, Main Bazaar,
Gandhi Statue,
Eral, Thoothukudi. ... Petitioner

/vs./

The Assistant Commissioner (ST),
Tuticorin III Assessment Circle,
Tuticorin. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records in Ref.No. ZD3306220030560 GSTIN 33ADFM3579M1ZX/2017-18 dated 06.06.2022 issued by the respondent and quash the same as illegal, arbitrary and further direct the respondent to pass an order afresh after affording reasonable opportunity of being heard to the petitioner within such time as may be directed by this Court.

For Petitioner : Mr.V.Sudalaimuthu

For Respondent : Mr.J.John Rajadurai
Government Pleader

ORDER

The petitioner has questioned the order dated 06.06.2022 issued by the respondent and sought issuance of a Writ of Certiorarified Mandamus to quash the said order and direct the respondent to hear the matter afresh.

2.The facts in brief, which are necessary for the disposal of the above writ petition, are herein below set out.

3.The petitioner would submit that he is a registered dealer under the Central Central Goods and Services Tax Act, 2017 holding GSTIN 33AADFM3579M1ZX. The petitoner would submit that the respondent issued a notice in Form GST DRC 01A dated 31.03.2022 stating that on scrutinzing the returns filed in GSTR 2A, it is seen that the petitioner has wrongly availed the input tax credit to the tune of Rs.1,97,223.04/- (CGST of Rs.98,611.52/- and SGST of the like amount) against the invoices of M/s.Joy International, Madurai.

The impugned order would contend the fact that the supplier, namely Joy International, had not supplied any goods and neither had the petitioner paid any tax and therefore, the petitioner was bound to pay the above amount.

4.Thereafter, in response to the said notice, the petitioner vide DRC 01A Part B dated 18.04.2022 and subsequent representation dated 09.04.2022 had contended that they had received the goods physically, for which the supplier had filed Form GSTR1, which is reflected in the GSTR2A. It is the contention of the petitioner that the respondent has not let in any evidence to prove the non-receipt of the goods and conceded that the demand was only on the basis of presumptions.

5.This is thereafter followed by a show cause notice dated 21.04.2022, where the respondent proposed to demand tax along with penalty for the wrong availment of credit, as the goods had not been received from the supplier. The petitioner has immediately sent a representation on 17.05.2022 requesting 30 days time to submit the reply. However, the impugned order came to be passed confirming the original demand. Since the order has been passed without giving an opportunity to the petitioner to put forward their case, the instant writ petition has been preferred by them.

6.When the matter had come up for admission on 28.03.2023, the respondent had sought time for filing his counter and an order of interim stay was granted for a limited period till the next hearing on 17.04.2023. Once again on 17.04.2023, the respondent had sought time for filing his counter and time was granted till today. Today, the learned Government Advocate for the respondent would fairly concede that the impugned order has been passed without hearing the petitioner and that the principles of natural justice has been ignored.

7.Considering the above, the Writ Petition is allowed. The impugned order passed by the respondent in Ref.No.ZD3306220030560 GSTIN 33AADFM3579M1ZX/2017-18 dated 06.06.2022 is set aside and the matter is remitted back to the respondent for fresh consideration. It is needless to state that the petitioner shall appear before the respondent on 30.06.2023 with all the relevant documents. The respondent shall pass orders on merits and in accordance with law within a period of four weeks therefrom. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

07.06.2023

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To

The Assistant Commissioner (ST),
Tuticorin III Assessment Circle,
Tuticorin.

P.T.ASHA, J.

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W.P.(MD) No.6570 of 2023

07.06.2023