



W.P.(MD) No.14027 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.14027 of 2023

and

W.M.P.(MD) Nos.11849 and 11851 of 2023

M/s.M.B.M.Steels,
Rep., by its Proprietor,
Paulnadar Thanga Mariappan,
4/94K, Ettayapuram Road,
Thoothukudi-628 002.

.. Petitioner

Vs.

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

.. Respondent

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records in GSTIN 33ALFPT8101P1ZQ dated 01.08.2022 for tax period 2018-19 issued by the respondent and quash the same as illegal, arbitrary and further direct the respondents 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.



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For Petitioner : Mr.S.Karunakar
For Respondent : Mr.J.John Rajadurai
Government Advocate

ORDER

The above writ petition is filed for the following relief:

“For the issue of a Writ of Certiorarified Mandamus, calling for the records in GSTIN 33ALFPT8101P1ZQ dated 01.08.2022 for tax period 2018-19 issued by the respondent and quash the same as illegal, arbitrary and further direct the respondents 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.”

2. It is the case of the petitioner that he is a dealer in hardware holding GST registration under the jurisdiction of the respondent herein. On 01.08.2022, the petitioner had received an order from the respondent stating that on a scrutiny of his GSTR-3B returns, *vis-a-vis* GSTR-2A return, the petitioner has received an inward supply from a non-existent tax payer (Sun Steels) for which he has availed input tax credit of Rs.71,604/- (CGST: Rs.35,802/- + SGST: Rs.35,802/-). The order



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further stated that the petitioner had been issued with a notice through the portal and a personal hearing notice had also been issued through this portal. However, the tax payer has not responded to the same. Therefore, the proposal was confirmed to recover the sum of Rs.71,604/- together with penalty of a like amount, under Section 74 of the Tamil Nadu Goods and Services Tax Act, 2017.

3. The petitioner would submit that though the respondent had found that he had been issued with a notice dated 28.03.2022, and subsequently a show cause notice dated 21.04.2022 proposing to demand a sum of Rs.71,604/- along with penalty of the equal amount, however, no notice of personal hearing had been issued after the show cause notice, either in the portal or through post.

4. The petitioner would, therefore, submit that he has not been given an opportunity to put forward his case and there has been violation of the principles of natural justice, as a result of which the order passed by the respondent is arbitrary. He would, therefore, seek to have the



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same set aside. He would also contend that Sun Steels is an existent firm with a GST registration. The records would also show that they have filed GST return and paid tax in respect of the supplies made to the petitioner.

5. Today, when the matter had come up for admission, learned counsel for the petitioner pointed out that the fact, based on which the show cause notice has been issued that the supplier of the petitioner was non-existent, stands disproved by the fact that the said supplier viz., Sun Steels is registered under GST and they have also paid tax in respect of the supply made to the petitioner. Therefore, had the petitioner been afforded an opportunity of personal hearing, he could have clarified the same to the respondent. This fact has not been refuted by the respondent. Therefore, considering the fact that the petitioner has not been afforded an opportunity of personal hearing to produce his documents, particularly when the petitioner is in possession of the documents to disprove the claim of the petitioner, the impugned order has to necessarily be set aside and accordingly, is set aside.



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6. In the result, this Writ Petition is allowed, the impugned order is set aside and the matter is remitted back to the respondent for fresh consideration. The petitioner shall produce copies of the documents as set out in the impugned order viz., the invoice copy, e-way bill copy and payment details. The said documents shall be submitted within a period of one week from the date of receipt of a copy of this order and the respondent shall consider the same and pass orders within a period of six weeks thereafter. No costs. Consequently, connected miscellaneous petitions are closed.

15.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

abr

To

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



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P.T.ASHA, J.

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