IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.02.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.2950 of 2024
and W.M.P.Nos.3201 and 3202 of 2024

Chennai Metals
Rep. by its Proprietor
Phool Chandji Ashok Kumar,
No.103, Ground Floor, Man Mandir,
Narayana Mudali Street,
Sowcarpet, Chennai 600 079. ... Petitioner

-vs-

1.Assistant Commissioner (State Tax),
NSC Bose Road Assessment Circle,
Chennai North Division,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai 600 003.

2.Kotak Mahindra Bank,
3, Dass India Tower,
2nd Line Beach, Parrys,
Chennai 600 001. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records pertaining to the impugned order dated 28-Sep-23 passed by the first respondent in GSTIN/33AACPA9852A1ZA/2018-19 along with Form GST DRC-07 dated 28-Sep-23 bearing reference No.ZD330923224891B, and quashing the same.

For Petitioner : Mr.P.R.Renganath

For Respondents : Mrs.K.Vasanthamala, GA (T)

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ORDER

The petitioner assails an assessment order and proceedings pursuant thereto. The petitioner is a trader of stainless steel sheets, plates, pipes, etc. The petitioner supplied SS-Scrap to Swamy Steel Corporation under invoice dated 19.09.2018. The taxable value of such invoice was Rs.7,94,294/- and the total value, inclusive of taxes, was Rs.9,38,447/-. The petitioner asserts that e-way bills were made mandatory from 02.06.2017 and that the invoice referred to above was issued during the nascent period of e-way bill implementation. Consequently, it is asserted that three e-way bills were originally generated inadvertently. Out of the three e-way bills, Bill No.511055459386 was cancelled within a short time of the generation thereof.

2. The petitioner also states that the entire tax liability arising out of the invoice was duly discharged. In those circumstances, it is stated that an intimation in Form DRC-01A followed by a show cause notice in Form DRC-01 were issued by the first respondent. The petitioner submitted detailed replies thereto on 12.10.2022 and 25.03.2023, respectively, and explained that two e-way bills were generated inadvertently in respect of a single transaction, which had already suffered tax. Therefore, the first respondent was called upon to drop proceedings. However, the impugned assessment order came to be issued. The present writ petition arises in the said facts and circumstances.

3. By inviting my attention to the impugned assessment order, learned counsel for the petitioner submitted that the said assessment order contains multiple patent errors. The first error pointed out is that tax liability has been computed on twice the gross value of the invoice, i.e. Rs.9,38,447/-. Secondly, he submits that the penalty proposed in the show cause notice was an aggregate sum of Rs.50,676/-, whereas the demand made in the assessment order towards penalty is a sum of Rs.1,68,920/-.

4. By drawing reference to the screenshot of the GST portal, learned counsel also points out that both the e-way bills, which form the subject of the present proceedings, i.e. e-way bill Nos.501055460752 and 511055460739, were generated on 19.09.2018 at the same time. He also points out that the GSTIN of the consignee is identical and not different as recorded in the impugned assessment order. For all these reasons, learned counsel submits that the

impugned order and proceedings pursuant thereto are liable to be quashed.

5. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice on behalf of the first respondent. She submits that the petitioner should have cancelled the duplicate e-way bill, and that the petitioner would have done so if it were an inadvertent error. She further submits that it is possible that more than one e-way bill is generated for goods covered by a single invoice, if the goods are divided into more than one consignment. Learned counsel further submits that the petitioner should have discharged the responsibility of placing all relevant documents before the first respondent to establish that it was an inadvertent error.

6. The tax invoice dated 19.09.2018 reveals that the taxable value of supply was Rs.7,94,294/- and that the gross value was Rs.9,38,447/-. On comparing this with the impugned assessment

order, it is evident that tax liability has been imposed on twice the gross value of Rs.9,38,447/-. In light of the fact that tax was paid on such invoice, even assuming that there is tax liability in respect of the second e-way bill, the manner of computation of tax in the impugned assessment order is completely unsustainable.

7. In addition, it is evident from the table at the penultimate page of the assessment order and the show cause notice that the proposed penalty was Rs.50,676/-. The abstract of demand on the last page of the assessment order, however, shows that the penalty demand is for a sum of Rs.1,68,920/-. On account of this discrepancy also, the impugned assessment order cannot be sustained.

8. On examining the show cause notice, I find that the tax demand proposed in the show cause notice is the same as the confirmed demand in the assessment order. Therefore, upon

remand, it becomes necessary for the first respondent to initiate fresh proceedings from the show cause notice stage.

9. For reasons set out above, the impugned assessment order is quashed. As a corollary, the matter is remanded. It is open to the first respondent to re-commence proceedings by issuing a fresh show cause notice.

10. W.P.No.2950 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.3201 and 3202 of 2024 are closed.

09.02.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

SENTHILKUMAR RAMAMOORTHY,J

rna

To

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