IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.6193 of 2024
and
W.M.P.No.6861 of 2024

TVI Swastik Enterprise,
Represented by its Proprietor
Mr.Yogeshrungta
No.54, Old No.47, Venkata Maistry Street,
3rd Floor, Mannady,
Chennai – 600 001. ...Petitioner

-Vs-

1.The Deputy Commissioner (ST),
GST – Appeal, Chennai – I,
C.T.Annexe Building, 3rd Floor,
N.1, Greams Road,
Chennai – 600 006.

2.The State Tax Officer,
Loansquare Assessment Circle,
No.32, Third Floor, Elephant Gate Bride Road,
Chennai – 600 003. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorari, calling for the records in the file of the 1st respondent vide impugned order in R.C.No.7/2024/A1 dated 22.02.2024 issued by the 1st respondent and quash the same.

For Petitioner : Mr.Ramesh Venkatachalapathy

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

ORDER

This writ petition is filed for issuance of a Writ of Certiorari, to quash the impugned order of the 1st respondent vide R.C.No.7/2024/A1 dated 22.02.2024.

2. The case of the petitioner is that they are doing business dealing with iron and steel materials falling under HSN 7213. They have obtained GST No.33BFVPR9592D1ZO and they are also regularly filing GST returns. During the course of business in the assessment year 2020-2021, the petitioner made purchases from M/s.SLO Industries Limited. The registration certificate of the seller is valid under the GST Act, 2017 and the supplies were duly reflected in GSTR-2A, based on that the petitioner has taken Input Tax Credit (ITC). However, the department issued ASMT-10 on 22.02.2023, wherein it was alleged that the supplier M/s.SLO Industries Limited has failed to furnish GSTR3B returns and has also failed to pay taxes

consequentially the input tax credit availed by the petitioner to be recovered on the pretext of contravention of Section 16(2)(c) of the CGST Act/ TNGST Act, 2017. Subsequently, the department issued a show cause notice on 18.04.2023 under Section 74 of the Act. For which the petitioner filed a reply on 17.05.2023 by Form GSTR-06. In the show cause notice itself, the date of the personal hearing was mentioned as 18.05.2023. Without considering any submission, the adjudication authority passed order on 02.08.2023 and a DRC-07 notice on 03.08.2023. However, the petitioner has not noticed the impugned order and the petitioner was under the *bona fide* belief that the 1st respondent is satisfied with the reply dated 17.05.2023 vide Form GST DRC-06 to SCN and therefore the matter is in abeyance.

3. Learned counsel for the petitioner submitted that it came to the shock of the petitioner through oral communication with regard to recovery by the Department. Immediately, they approached the Department and then only they came to know the proceedings of the 1st respondent. Consequently, the petitioner preferred an Appeal before the Appellate Authority along with pre-deposit of 10% of the demand on 06.02.2024. However, the 1st respondent returned with the Appeal petition citing the reason that the appeal

was filed with a delay of 2 months and 21 days.

4. Learned counsel further submitted that for the supply made by M/s.SLO Industries Limited, the petitioner made the tax payment through a proper banking channel and the supplier also loaded the credit details in portal GSTR-2A. Based on the figures in 2A, the petitioner taken ITC and the same was discharged while discharging the GST. Because of some delay, latches or non payment on the part of the supplier, innocent purchasers like the petitioner should not be penalised. On the one hand the petitioner should have paid tax and on the other hand, the same was denied on the ground that the supplier had not filed the return. The petitioner business which is a small one which cannot afford this huge denial of input tax credit and recovery of the same. The department has not alleged anything against the petitioner for denying the credit. However, they are denying it on account of the non-filing of return by the supplier. In this regard, it is very difficult for the business community to check the antecedents and follow up with the supplier whether they have paid the tax or not, which is a herculean tax and the same is next to impossible. Aggrieved by the same, the petitioner has approached this Court by way of filing this writ petition.

5. Learned Government Advocate (Tax) appearing for respondents 1 and 2 submitted that in this case the demand notice was issued by the Assistant Commissioner (Sales Tax), Loansquare Assessment Circle vide reference No.ZD330823017173Q dated 03.08.2023. Aggrieved against the order for Demand Notice against a taxable person filed an appeal before this forum online on 06.02.2024, whereby hard copy was submitted to this office on 19.02.2024. As the hard copy was submitted after 7 days, the date of issue of the provisional acknowledgement was taken into account for the calculation of the time limit, based on which a memorandum was issued, citing the time limitation prescribed under Section 107(4) of the CGST/SCST Act, 2017 read with rule 108 of the CGST/SCST Rules, 2017.

6. Learned Government Advocate (Tax) further submitted that the appeal petition was filed after the limitation period. As per Section 107(4) of the TNGST Act 2017, the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may allow it to be presented within a further period of one month. The appellants have been prevented for sufficient cause from non-presenting the appeal within the aforesaid period of three months as per

Section 107(1) of the TNGST Act 2017 and further period of one month, only if the appellants have been prevented by sufficient cause from presenting the appeal within a period of three months. Therefore, on any account an appeal presented after a period of four months from the date of receipt of the decision or order being communicated to such a person shall not be entertained by the Appellate Authority functioning under the TNGST Act 2017.

7. Heard both sides and perused the materials available on record.

8. In the instant case, though the petitioner has submitted his reply dated 17.05.2023 to the show cause notice in which the date was mentioned as 18.05.2023 and the petitioner was not aware of the order passed by the adjudication authority on 02.08.2023 and a DRC-07 notice on 03.08.2023. The petitioner was under the *bona fide* belief that the 1st respondent is satisfied with the reply dated 17.05.2023 and the proceedings are kept in abeyance. Only after the receipt of oral communication with regard to the recovery by the department the petitioner came to know about the proceedings of the 1st respondent.

9. **In view of the above factual matrix of the case, this Court is of the considered view that the delay of 2 months and 21 days is condoned on condition that the petitioner shall pay 15% of the disputed tax on or before 25.03.2024 and on payment of the same, the petitioner may prefer the appeal before the 1st respondent / The Deputy Commissioner (ST), GST – Appeal, Chennai, within a period of two weeks thereof.**

10. In the result, the **writ petition stands disposed of with the above observation and direction**. No costs. Consequently, connected miscellaneous petition is closed.

08.03.2024

cda
Index : Yes/No
Speaking/Non Speaking order

J.SATHYA NARAYANA PRASAD, J.

cda

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