IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **25.03.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.7355 of 2024
&
W.M.P.Nos.8250 & 8254 of 2024

M/s.Stide Steels Pvt. Ltd.
Rep. by its Director: Nirmal Kumar
A-7/E, SIPCOT Industrial Complex,
Gummidipoondi,
Thiruvallur. ... Petitioner

-vs-

The Assistant Commissioner (ST)FAC),
Gummidipoondi Assessment Circle,
No.32, Integrated Commercial Taxes Building,
1st Floor, Room No.113, Elephant Gate Bridge Road,
Vepery, Chennai-600 003. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari to call for the records relating to the Order passed by the respondent in GSTIN:33AAMCS0304G1ZS/2017-18, dated 30.12.2023, (Ref.No.ZD3312232859563) relating to the proceedings initiated under Intimation DRC-01A dated 30.03.2023 and DRC-01-SCN dated 16.05.2023 and to quash the same as contrary to the provisions of the Act, violative of principles of natural justice.

For Petitioner : Mr.M.A.Mudimannan

For Respondent : Mr.T.N.C.Kaushik,
Additional Government Pleader (Taxes)

ORDER

In this writ petition, an assessment order pertaining to the assessment period 2017-18 is challenged on the ground that a reasonable opportunity was not provided to the petitioner and that the impugned order was not preceded by a notice in Form ASMT 10.

2. The petitioner is engaged in the business of manufacture of iron and steel products. As a registered person under applicable GST enactments, the petitioner filed returns. Upon scrutinising the returns of the petitioner in relation to the relevant assessment period and noticing discrepancies, an intimation in Form GST DRC-01A was issued on 30.03.2023. This was followed by a show cause notice dated 16.05.2023 and the impugned order dated 30.12.2023.

3. Learned counsel for the petitioner pointed out that the intimation

and show cause notice were pursuant to a scrutiny of the petitioner's returns. Therefore, it is submitted that notice in Form ASMT 10 should have been issued before the issuance of the intimation and show cause notice. He further submits that no personal hearing was provided before the impugned order was issued. On instructions, he submits that the the petitioner is ready and willing to remit about 5% of the disputed tax demand as a condition for remand.

4. Mr.T.N.C.Koushik, learned Additional Government Pleader, accepts notice on behalf of the respondents. By referring to the impugned order, he points out that the petitioner was provided several opportunities to respond to the intimation and show cause notice, but failed to do so. He also submits that a personal hearing was offered to the petitioner but the petitioner failed to avail of the same.

5. In the affidavit, the petitioner averred that the intimation was issued pursuant to a scrutiny of the returns filed by the petitioner for the relevant assessment period. When proceedings are initiated pursuant to scrutiny, it is

necessary that notice in Form ASMT 10 is issued so as to provide an opportunity to the petitioner to explain the disparity between the relevant returns. In this case, this procedure was not followed.

6. At the same time, it cannot be said that the petitioner was not provided opportunities to contest the tax demand, which arises out of alleged disparity between the GSTR 3B and GSTR 9 returns. A personal hearing was also offered on 22.05.2023. The fact remains, however, that the tax demand pertaining to alleged disparity between the monthly and annual returns was confirmed without hearing the petitioner. The petitioner has also offered to remit 5% of disputed tax demand as a condition for remand. When these facts and circumstances are considered cumulatively, it is just and appropriate that an opportunity be provided to the petitioner to contest the tax demand albeit by putting the petitioner on terms.

7. For reasons set out above, the impugned assessment order is quashed subject to the condition that the petitioner remits 5% of the disputed tax demand. Such amount shall be remitted within three weeks from the date

of receipt of a copy of this order. The petitioner is also permitted to submit a reply to the show cause notice within the aforesaid period. Upon receipt of the petitioner's reply and upon being satisfied that 5% of the disputed tax demand was received in respect of this assessment period, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within two months from the date of receipt of the petitioner's reply.

8. W.P.No.7355 of 2024 is disposed of on the above terms. Consequently, connected miscellaneous petitions are closed. No costs.

25.03.2024

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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To

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SENTHILKUMAR RAMAMOORTHY J.

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