IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9155 of 2024 and
W.M.P.Nos.10185 & 10186 of 2024

Tvl.Sakthi Steel Industries,
Represented by its Director,
Mr.GT Balaji,
No.18/26, 2nd street,
Loganathan nagar,
Choolaimedu, Chennai-600 094. ...Petitioner

Vs.

1.State Tax Officer Group-IX,
Intelligence-I, Commercial Taxes Building,
PAPJM Building,
Room No.133, 1st floor, No.1,
Greams Road, Chennai-600 006.

2.Commercial Tax Officer,
Chennai Central Tamil Nadu. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in order passed by the 1st respondent vide GSTIN 33AAPCS1403D1ZT/2017-2018 dated 30.12.2023 only relating to confirmation of demand under the heading of wastage, along with the consequential DRC-07 order, Ref No.ZD3312232792800 dated 30.12.2023 issued by the 2nd respondent and seeking to quash the same as arbitrary and with a consequential direction to the 1st and 2nd respondents to drop the proceedings taking into consideration the precedence set by this Court in the case of similarly placed assessees.

For Petitioner : Ms.P.Jayalakshmi

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

<u>O R D E R</u>

An order dated 30.12.2023 pertaining to assessment period 2017-2018 is assailed in so far as it pertains to wastage. The petitioner received a show cause notice dated 30.09.2023 and replied thereto on 11.12.2023. The petitioner asserts that it failed to respond to the issue relating to wastage on account of inadvertence. The impugned order was issued thereafter on 30.12.2023.

2. Learned counsel for the petitioner submits that there is inherent wastage in the process of manufacturing products such as TMT bars. By pointing out that this issue was considered and decided by this Court in

M/s. ARS Steels and Alloy International Private Limited v. The State Tax Officer, W.P.Nos.2885, 2888, 2890, 3930, 3933 & 3936 of 2020 (ARS Steels), she points out that proceedings relating to assessment period 2018-2019 in so far as it pertained to wastage were dropped upon consideration of the above mentioned judgment. She further submits that the petitioner inadvertently failed to address this issue while submitting reply dated 11.12.2023. Consequently, she seeks another opportunity to contest the tax demand on this issue on merits. On instructions, she submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand pertaining to the issue.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, accepts notice for the respondents. By referring to the petitioner's reply dated 11.12.2023, Mr.T.N.C.Kaushik points out that the petitioner deals not only in finished products but also in steel scrap. By further submitting that steel scrap is separately classified for GST purposes, he contends that the judgment in *ARS Steels* would not apply in this context.

4. On examining the petitioner's reply dated 11.12.2023, it is noticeable that the issue relating to wastage was not responded to by the

petitioner, possibly by oversight. Consequently, in the impugned order, the tax demand was confirmed because the petitioner did not reply. The petitioner has placed on record the show cause notice pertaining to assessment period 2017 - 2018, wherein the tax demand pertaining to wastage was dropped after noticing the judgment in *ARS Steels*. In these circumstances, albeit by putting the petitioner on terms, the interest of justice warrants that the petitioner be provided another opportunity.

5. For reasons set out above, the order impugned herein is set aside and the matter is remanded for reconsideration subject to the petitioner remitting 10% of the disputed tax demand pertaining to wastage as agreed to within two 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 with regard to this issue within the aforesaid period. Upon receipt thereof and upon being satisfied that 10% of the disputed tax demand was received, the assessing officer is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh assessment order on this issue within a period of two months from the date of receipt of the petitioner's reply. While passing

orders, the assessing officer shall take into account the judgment of this Court in *ARS Steels* by also examining the applicability thereof.

6. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

05.04.2024

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

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To

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2.Commercial Tax Officer,
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SENTHILKUMAR RAMAMOORTHY,J.

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