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W.P.No.9607 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9607 of 2024
and W.M.P.Nos.10637 & 10638 of 2024

M/s.APL Apollo Tubes Limited (Unit II)
Represented by its Vice President (Legal & Taxation)
Shri.Rajeev Kothari
No.332-338, Alur Village Road,
Hosur 635 109.

... Petitioner

-vs-

1.State Tax Officer (Intelligence)
Inspection - Group II
Commercial Tax Buildings
Perandapalli, Hosur 635 109.

2.State Tax Officer (Intelligence)
Inspection Cell-1
Salem 636 007.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, called for the records relating to the impugned order bearing Ref.No. GST INS-01/184/2022-23 Dt. 29.02.2024 (for the year 2017-18), passed by the



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first respondent and quash the same as the same being arbitrary,
passed in violation of the principles of natural justice.

For Petitioner : Mr.G.Natarajan

For Respondents : Mr.T.N.C.Kaushik, AGP (T)

ORDER

An order in original dated 29.02.2024 is challenged insofar as it pertains to three issues. The petitioner is engaged in the manufacture and supply of tubes and pipes of iron and steel. Pursuant to show cause notice dated 30.06.2023, the petitioner replied on 24.11.2023. The order impugned herein was issued thereafter on 29.02.2024.

2. Learned counsel for the petitioner pointed out that the first issue relates to the issuance of credit notes by the supplier. As regards this issue, he submitted that arguments were advanced in



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course of W.P.No.8898 of 2024 and that the matter was remanded to

the assessing officer based on such contentions. With regard to the issue relating to freight, learned counsel referred to the reply to the show cause notice and pointed out that the petitioner had placed on record sample invoices. The petitioner had also bifurcated amounts paid towards freight for the Hosur unit, which is the relevant unit and enclosed both a reconciliation statement and a statement from the Chartered Accountant in respect of such bifurcation. By drawing my attention to the impugned order, learned counsel submitted that it was recorded therein that the petitioner had not filed any documents or evidence in this regard. He next dealt with the imposition of GST on commission and printed out that such commission pertained to consignment sales of units, other than Hosur. For all these reasons, he submits that the impugned order calls for interference.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader,



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accepts notice for the respondents. With regard to the issue pertaining to freight, learned counsel submitted that the tax demand was confirmed upon appraisal of the evidence presented by the petitioner. By pointing out that the petitioner was provided sufficient opportunity to place all material evidence on record, learned Additional Government Pleader contends that such evidence should not be re-appraised in course of proceedings under Article 226 especially when the petitioner has a statutory remedy in respect thereof.

4. With regard to the issue relating to the issuance of credit notes, in W.P.No.8898 of 2024, the impugned order was set aside and the matter was remanded for re-consideration upon considering the submissions of learned counsel for the petitioner to the effect that lower Input Tax Credit was availed of in the subsequent months and that no revenue loss was occasioned as a result. The same reasons hold good in this writ petition also. As regards the imposition of GST of freight charges, the petitioner had placed on record a certificate



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from the Chartered Accountant with regard to bifurcation on freight

as between the Hosur unit of the petitioner and the other units.

Sample invoices were also produced. In the operative portion of the impugned order, it is recorded as under:

"Freight out

I have carefully perused the reply filed by the tax payer Freight out relates to all India basis Rs.1,18,87,84,846/- out of which Rs.30,07,37,859/- relates to Hosur unit. Out of which Rs.9,19,20,562/- relates to pre GST and remaining turnover of Rs.20,88,17,297/- relates to post GST. In that the Tax payer declared freight collected of Rs.42774450/-. The tax payer's have not filed any documents and evidences in this regard. On verification it is found that the tax payer have collected freight. The freight collected is part and parcel of sales turnover which was not included in the sale turnover reported. Therefore the GST @ 18% is levied under TNGST Act-2017."

5. Therefore, it appears that the assessing officer recorded that the tax payer did not file any documents and evidence with regard to payment of GST on the collected freight charges. This conclusion is not justified in light of the evidence placed on record by the



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petitioner. At the same time, it should be noticed that the petitioner did not place on record all the invoices for purposes of establishing that GST was paid on the total taxable supply after including freight charges.

6. The last issue relates to non-payment of GST on commission. On this issue, the petitioner's contention that the commission on consignment sales did not relate to the Hosur unit was accepted only to the extent of Rs.28,95,516/- and was confirmed as regards Rs.48,04,484/-. The petitioner had also submitted a Chartered Accountant's certificate along with sample invoices. Since no finding was recorded with regard to such certificate, reconsideration is warranted.

7. In these circumstances, the impugned order calls for interference with regard to the three issues discussed above. Consequently, the impugned order is set aside in relation to these three issues and remanded for re-consideration. The first respondent is directed to provide a reasonable opportunity to the petitioner,



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including a personal hearing, and thereafter issue a fresh order within *two months* from the date of receipt of a copy of this order.

For the avoidance of doubt, it is made clear that the observations set out in this order are not intended to be binding on the first respondent while undertaking re-consideration.

8. W.P.No.9607 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.10637 and 10638 of 2024 are closed.

12.04.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

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