IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9458 of 2024 and
W.M.P.Nos.10452, 10454 & 10523 of 2024

Tvl. Metalica Metals,
Represented by its Partner:Mr.Kailash Bhandari,
No.225, Linghi Chetty Street,
Chennai-600 001. ...Petitioner

Vs.

1.The Deputy State Tax Officer II,
Harbour Assessment Circle,
Integrated Commercial Taxes Office Building Complex,
No.32, Elephant Gate Bridge Road,
Vepery, Chennai-600 003.

2.The Branch Manager,
Standard Chartered Bank,
No.19, Rajaji salai,
Chennai-600 001. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the 1st respondent passed in GSTIN:33AAMFM2632G1ZH/2019-2020 and consequential order in Form GST DRC-07 having Reference

No.ZD331123053697F under Section 73 of the Act all dated 09.11.2023 for the Financial year 2019-2020 and quash the same as illegal contrary to the provisions of the TNGST/CGST Acts, and in violation of principles of natural justice and fair play.

For Petitioner : Mr.T.Pramod Kumar Chopda, Sr. Counsel
for Ms.P.Aruna Chopda

For R1 : Mr.V.Prashanth Kiran,
Government Advocate (T)

O R D E R

An order in original dated 09.11.2023 for assessment period 2019-2020 and the consequential order dated 09.11.2023 are challenged in this writ petition on the ground that the petitioner was not provided a reasonable opportunity.

2. Upon receipt of an intimation dated 28.04.2023, by reply dated 04.07.2023, the petitioner requested for 30 days' time to undertake necessary reconciliation and file a reply. The impugned original order dated 09.11.2023 and consequential orders were issued thereafter.

3. Learned senior counsel for the petitioner submits that the tax proposals pertain to an alleged mismatch between the GSTR 3B and GSTR 1 returns as regards outward supply, and between the GSTR 3B and the auto-populated GSTR 2A as regards inward supply. With regard to both these discrepancies by referring to the impugned order, he points out that the extent of discrepancy was only Rs.5,210/- each towards SGST and CGST as regards outward supply and only about Rs.18,143/- each towards SGST and CGST as regards ITC. He also points out that a sum of Rs.2,25,073/- was debited from the electronic ledger of the petitioner before the writ petition was filed and that further amounts aggregating Rs.6,04,893/- were debited as on date. In these circumstances, he makes a request that the petitioner be provided an opportunity to contest the tax demand on merits.

4. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the 1st respondent. He submits that the detailed show cause notice has not been placed on record and, therefore, he is unable to confirm the scope of such show cause notice. He also submits that a personal hearing notice dated 13.09.2023 was issued to the petitioner and that the petitioner failed to avail of such personal hearing.

5. From the impugned order, it is evident that such order was issued without hearing the petitioner. No doubt, the petitioner was provided an opportunity but failed to avail of such opportunity. It is also clear that the tax liability pertains to three issues, namely, output mismatch between GSTR 3B and 1, input mismatch between GSTR 3B and 2A and e-way bill verification. As contended by learned senior counsel, on the first two issues, the extent of discrepancy is not substantial. The summary of the show cause notice does not appear to deal with the issue relating to e-way bill verification. It is also noticeable that an aggregate sum of Rs.6,04,893/- was debited from the petitioner's electronic credit ledger towards tax liability confirmed in the impugned order. In these facts and circumstances, it is just and necessary to provide an opportunity to the petitioner to contest the tax demand on merits.

6. Therefore, the impugned order dated 09.11.2023 is set aside and the matter is remanded for reconsideration. The petitioner is permitted to file a reply to the show cause notice dated 06.06.2023 within a period of two weeks from the date of receipt of a copy of this order. Upon receipt thereof, the 1st 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. Since the impugned assessment order dated 09.11.2023 has been set aside, the consequential attachment order dated 16.03.2024 is also set aside and the attachment is raised. For the avoidance of doubt, it is made clear that amounts appropriated pursuant to the above orders shall abide by the outcome of the remanded proceedings.

7. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are closed.

08.04.2024

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

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SENTHILKUMAR RAMAMOORTHY,J.

Kj

To

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