IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.04.2024

CORAM:

THE HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.9482 of 2024
and
W.M.P.Nos.10477 & 10479 of 2024

Ford India Private Limited,
Represented by its Authorised Signatory,
Mr.K.Sakthivel,
No.1, Henry Ford Road, Singaperumalkoil,
Kancheepuram-603204. ... Petitioner

Versus

Deputy Commissioner (ST-III),
Large Taxpayer Unit,
IV floor, Integrated CT Building,
Nandanam, Chennai-600 035. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to impugned assessment order dated 28.12.2023 bearing Reference No.3AAACM4454H1ZP/2017-2018 passed by the 1st respondent and quash the same.

For Petitioner : Mr. Raghavan Ramabadran

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

O R D E R

An order dated 28.12.2023 is challenged on the ground that a personal hearing was not provided after the petitioner's reply to the show cause notice.

2. Upon scrutiny of the petitioner's reply, an intimation was issued to the petitioner on 25.10.2022 pertaining to alleged non-GST turnover. The petitioner's reply thereto on 01.11.2022. This was followed by a show cause notice dated 17.11.2022, which was replied to by the petitioner dated 17.02.2023. The impugned assessment order was issued thereafter on 28.12.2023.

3. Learned counsel for the petitioner referred to the petitioner's reply to the show cause notice and pointed out that the petitioner stated therein that there was no non-GST turnover as contended in the show cause notice. He further submitted that the petitioner had explained that there was non-operating revenue by way of government grants like duty credit scrips and EPCG duty concessions; interest income, written back

liabilities; and other non-operating income. Without providing an opportunity of personal hearing, learned counsel submits that the impugned order was issued. He also submits that the petitioner's reply was not taken into consideration in the impugned order.

4. Mr. V. Prashanth Kiran, learned Government Advocate, accepts notice on behalf of the respondent. On instructions, he submits that the petitioner's e-mail dated 05.12.2022 was not received. He also points out that the petitioner did not opt for a personal hearing.

5. Petitioner's reply dated 17.02.2023 is on record. Although the document indicates that the petitioner had checked the box for no personal hearing, the statutory mandate of sub-section (4) of Section 75 of applicable GST enactments is that a personal hearing should be provided either if requested for or if an order adverse to the tax payer is proposed to be issued. In this case, it should also be noticed that the petitioner's requested for personal hearing under e-mail dated 05.12.2022, which the respondent says was not received. On perusal of the impugned order, it is noticeable that the tax payer's reply was

adverted to and the following finding was recorded:-

> *"However, the notice issued is based on the input tax credit availed on their purchase. Therefore, the reply filed by the taxpayer is not sufficient and suffice the purpose. Therefore, the reverse proposed is confirmed under Section 73 of the TNGST Act as follows,*

Details	***CGST***	***SCST***
Reversal of ITC	*30,10,77,178/-*	*30,10,77,178/-*
Penalty @ 10%	*3,01,07,718/-*	*3,01,07,718/-*

> *DRC 07 issued accordingly,*"

The above operative portion of the order does not contain any reasons for rejecting the petitioner's reply. Since these findings are not supported by reasons, the impugned order is not sustainable.

6. Therefore, the impugned order dated 28.12.2023 is set aside and the matter is remanded for reconsideration. 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 a copy of this order.

7. W.P.No.9482 of 2024 is disposed of on the above terms without any order as to costs. Consequently, connected miscellaneous petitions are also closed.

08.04.2024

Index : No
Internet : Yes
Neutral Citation : No

klt

To

The Deputy Commissioner (ST-III),
Large Taxpayer Unit,
IV floor, Integrated CT Building,
Nandanam, Chennai-600 035.

SENTHILKUMAR RAMAMOORTHY,J.

klt

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