IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.10848 of 2024
and W.M.P.No.11955 & 11956 of 2024

M/s.Sri Krishna Fabricators (India) Pvt. Ltd.,
Represented by its Managing Director,
Sri.B.Saktheeswaran,
No.8, GST Road,
Pukkathurai Village,
Kanchipuram District 603 308. ...Petitioner

Vs.

The Assistant Commissioner (ST),
Thirukazhukundram Assessment Circle,
No.42, Wahab Nagar,
Thirukazhukundram-603 109. .. Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent herein in GSTIN: 33AAQCS3449G1Z4 / 2017-18 and quash the proceeding dated 01.12.2023 passed therein.

For Petitioner : Mr.Raveendran B.

For Respondent : Mr.V.Prashanth Kiran, Govt. Adv. (T)

O R D E R

An order in original dated 01.12.2023 is assailed both on the ground of denial of reasonable opportunity and on the ground of non application of mind. After issuing show cause notice dated 14.09.2023, the order impugned herein was issued on 01.12.2023. The petitioner asserts that he was not aware of these proceedings until the petitioner's bank account was attached.

2. Learned counsel for the petitioner submits that the tax proposal pertains to the difference between Input Tax Credit (ITC) available as per the GSTR 2A and the ITC availed of under the petitioner's GSTR 3B returns. Learned counsel contends that tax liability was imposed on the petitioner although the petitioner availed of lower ITC than that reflected in the GSTR 2A. By relying on earlier orders in W.P.Nos.6772 & 6776 of 2024 and W.P.Nos.8599 & 8607 of 2024, learned counsel contends that this Court interfered under similar circumstances previously. Without prejudice, on instructions, learned counsel submits that the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts

notice for the respondent. He points out that the petitioner failed to reply either to the intimation or the show cause notice. As regards reliance on earlier orders of this Court, learned counsel points out that in those cases, the reply of the petitioner was disregarded.

4. On perusal of the impugned order, it appears that the ITC available in the auto-populated GSTR 2A exceeded the ITC availed of in the petitioner's GSTR 3B returns. *Prima facie*, in those circumstances, GST liability would arise only if there was sales suppression. Since the petitioner did not respond to the show cause notice, it appears that tax liability was imposed. As a registered person, the petitioner cannot be absolved of responsibility in this regard. On balance, albeit by putting the petitioner on terms, the impugned order calls for reconsideration.

5. For reasons set out above, the impugned order dated 01.12.2023 is set aside and the matter is remanded for reconsideration on condition that the petitioner remits 10% of the disputed tax demand as agreed to within a period of two weeks from the date of receipt of a copy of this order. The petitioner is permitted to submit a reply to the show cause notice by enclosing all relevant documents within the aforesaid period.

Upon receipt of the petitioner's reply and upon being satisfied that 10% of the disputed tax demand was received, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh order within three months from the date of receipt of the petitioner's reply.

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

25.04.2024

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

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To

The Assistant Commissioner (ST),
Thirukazhukundram Assessment Circle,
No.42, Wahab Nagar,
Thirukazhukundram-603 109.

SENTHILKUMAR RAMAMOORTHY,J.

Kj

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