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W.P.No.15363 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.15363 of 2021

and

W.M.P.No.16246 of 2021

M/s.SS Traders,

Represented by its Proprietor Mr.G.Dharun

... Petitioner

Vs.

1.The Joint Commissioner (ST) (Intelligence),
Erode Division,
Commercial Taxes Building,
No.1, Brough Road, Erode – 638 001.

2.The State Tax Officer,
Inspection-5, Intelligence,
Office of the Deputy Commissioner (ST) (Intelligence),
Erode,
Commercial Taxes Building,
No.1, Brough Road, Erode – 638 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the second respondent in proceedings in GSTIN: 33AQVPD8811F1ZS/2017-2018 dated 12.04.2021 passed therein for the Assessment Year 2017-2018.



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For Petitioner : Mr.Naveen Kumar Moorthi
for Mr.T.Shanmugam

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

ORDER

This writ petition is of the year 2021.

2. In this writ petition, the petitioner has challenged the impugned Assessment Order bearing GSTIN: 33AQVPD8811F1ZS/2017-2018 dated **12.04.2021** passed by the second respondent for the Assessment Year 2017-2018.

3. The case of the petitioner is that the impugned Assessment Order has been in gross violation of principle of natural justice and also suffers from want of jurisdiction.

4. Learned counsel for the petitioner would submit that a portion of the turnover relates to pre-GST era and for the remaining portion, the tax liability was paid by the petitioner on **11.01.2021** along with interest.



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5. Learned counsel for the petitioner would further submit that the second respondent has issued Show Cause Notice dated **11.02.2021** to the petitioner, to which, the petitioner replied on **15.03.2021**, requesting three weeks time. Pursuant to the said reply, the second respondent issued a notice on **22.03.2021**, fixing the date of personal hearing on **06.04.2021** at 11.00 a.m in the office of the second respondent. Replying to the said notice, on **31.03.2021**, the petitioner requested for fifteen days time.

6. The second respondent issued another notice on **07.04.2021**, granting one final opportunity to the petitioner to file objections on or before **12.04.2021** during the office hours from 10.00 a.m to 5.45 p.m and in the same notice, the second respondent also directed the petitioner to appear for personal hearing on **12.04.2021**, without indicating any specific time for personal hearing.

7. It is further submitted that goods were not received by the petitioner and the petitioner had deliberately not paid the tax from Electronic Cash Register. The petitioner wrongly claimed/availed the Input Tax Credit towards the output tax liability based on the eligible Input Tax Credit. It is submitted



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that this act of the petitioner also warrants penalty as required under Section 74 of the respective GST enactments. It is therefore submitted that the impugned Assessment Order does not call for any interference. Hence, prays for dismissal of the writ petition.

8. It is submitted that the petitioner also appeared for a personal hearing on **12.04.2021**. However, without considering the same, the impugned Assessment Order has been passed by the second respondent on the said date.

9. Aggrieved by the impugned Assessment Order dated **12.04.2021**, the petitioner has come forward with this writ petition on the ground that there is gross violation of the principles of natural justice.

10. Learned counsel for the petitioner would submit that the petitioner has also closed down the business in 2019 and that the petitioner is also not having any other source of income but has been mulct with a huge tax liability of **Rs.5,32,45,970/-** for no fault of the petitioner.



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11. It is submitted that the petitioner cannot be found fault with on account of failure of the supplier to file statutory returns as is contemplated under the respective GST enactments and the rules made thereunder. As far as the denial of Input Tax Credit on the ground that the supply was without the actual supply of goods is concerned, it is submitted that the petitioner was engaged in the business of Iron and Steel namely Thermo Mechanically Treated (TMT) Bar, a type of Steel bar used in construction projects, underground and underwater structures.

12. It is submitted that the supply of goods was directly from the place of storage godown/warehouse and the invoices were directly raised from the branch office of the head office. It is further submitted that the petitioner had also received consideration for the supplies effected and therefore, it cannot be said that no supply was effected.

13. That apart, it is submitted that the case was heard on **12.04.2021** and on the same date, the impugned Assessment Order has been passed consisting of 105 pages, which is technically impossible as the petitioner was fully heard on the said date.



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14. On the other hand, the learned Additional Government Pleader for the respondents would submit that the petitioner is beneficiary of illegitimate Input Tax Credit from the bogus traders namely, viz., **M/s.Sri Devi Enterprises, M/s.JJ Traders and M/s.Jaya Trading Company.**

15. In this connection, the learned Additional Government Pleader for the respondents has placed reliance on the decision of this Court in **Tvl.Sahyadri Industries Limited Vs. State of Tamil Nadu**, (2023) 115 GSTR 320.

16. Having considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents, this Court is inclined to partly come to the rescue to the petitioner by quashing the impugned Assessment Order and by remitting the case back to the respondents to pass a fresh order with the following conditions:

- i. The petitioner shall deposit 10% of the disputed tax of Rs.31,56,386/-, within a period of six weeks from the date of receipt of a copy of this order.
- ii. The petitioner shall file a detail reply to the impugned Assessment Order,



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which stands quashed, within a period of thirty days from today.

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17. The impugned Assessment Order which stands quashed shall be treated as addendum to the Show Cause Notice dated **11.02.2021** issued to the petitioner, which preceded the impugned Assessment Order.

18. It is made clear that in case the petitioner fails to comply either of the abovesaid conditions, it shall be construed that the writ petition was dismissed with liberty to the respondents to proceed against the petitioner in the manner known to law.

19. This Writ Petition is disposed of with the above observations and directions. No costs. Connected Writ Miscellaneous Petition is closed.

16.08.2024

(¹/₄)

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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C.SARAVANAN, J.



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- To
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