IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **19.06.2024**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.15211 of 2024
and W.M.P.Nos.16544 & 16545 of 2024

Tvl. Sonali Metal Industries LLP,
(Represented by its Partner Vinod Babulal Mandot)
Ground Floor No.4, G4, Jain Plaza, 30/31,
Oppanakara Street, Coimbatore Town,
Coimbatore, Tamil Nadu 641 001. ... Petitioner

-vs-

The Assistant Commissioner (ST),
RG Street Circle,
Commercial Taxes Buildings,
Dr.Balasundaram Chettiar Road,
Coimbatore 641 018. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records relating to impugned order bearing GSTIN 33ADPFS3521E1Z8/2019-20 dated 02.02.2024 passed by the respondent and quash the same.

For Petitioner : Mr.G.Natarajan

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

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ORDER

In this writ petition, the order dated 02.02.2024 with regard to the imposition of tax, interest and penalty is challenged. The petitioner is engaged in the business of trading of metal scraps. A surprise inspection was conducted at the petitioner's registered place of business and other branches in August 2023. This was followed by a show cause notice dated 03.10.2023. The petitioner replied to such show cause notice seeking an extension of time on the ground that notices were received in respect of five financial years and that the petitioner is in the process of gathering the required data to submit a detailed reply. The impugned order was issued in the above facts and circumstances.

2. Learned counsel for the petitioner submits that the petitioner is part of a group of entities and that such group includes Sonali

Extrusion Private Limited and Shriniwas Impex. Since the licence for procurement of metal scrap was issued to Sonali Extrusion Private Limited, he submits that the petitioner had to necessarily purchase goods from Sonali Extrusion Private Limited. By referring to the order impugned herein, learned counsel submitted that the respondent noticed that certain suppliers (named in the impugned orders) had generated fake invoices and, on that basis, concluded that the petitioner acted as an intermediary in bill trading transactions. Merely because there were transactions between the petitioner and Sonali Extrusion Private Limited or between the petitioner and Shriniwas Impex, he contended that it could not have been concluded that the petitioner was engaged in bill trading. He further submits that the petitioner was not provided a reasonable opportunity to place all relevant documents on record to establish that the transactions were genuine.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. By referring to the sequence of

dates and events, Mr.V.Prashanth Kiran contends that the petitioner was provided multiple opportunities to place all relevant document on record and establish that the transactions were genuine. He further submits that a person who fails to avail of opportunities provided by the respondent cannot complain about breach of principles of natural justice. In support of this contention, he relied on a judgment of the Kerala High Court in *C.Prasannakumaran Unnithan v. The Commissioner of Income Tax (Appeals) and another, order dated 21.09.2023 in W.P(C) No.30276 of 2023*.

4. On instructions, learned counsel for the petitioner submits that the petitioner is ready and willing to remit 10% of the disputed tax demand under the impugned order as a condition for remand.

5. The documents on record clearly indicate that the petitioner was provided several opportunities to contest the claim for tax, interest and penalty. Upon receipt of the intimation and show cause

notice, the petitioner could and should have placed on record documents indicating movement of goods between the group entities. Such documents could have been in the form of e-way bills, lorry receipts, weighment slips and the like. Instead of submitting such documents, the petitioner merely requested for further time to provide the documents by citing the fact that notices pertaining to five assessment periods were issued. Therefore, the petitioner cannot be absolved of responsibility for the current state of affairs. It should, however, be noticed that substantial amounts were imposed as penalty without taking into account documents that the petitioner claims is in his possession. When these facts and circumstances are considered cumulatively, a case is made out to provide the petitioner another opportunity, albeit by putting the petitioner on terms.

6. Therefore, the order impugned herein is set aside subject to the condition that the petitioner remits 10% of the disputed tax demand under the impugned order as a condition for remand in the aggregate, after giving credit of amounts remitted earlier. Such

amount shall be remitted within ***three weeks*** from the date of receipt of a copy of this order. The petitioner is also permitted to submit a detailed reply to the show cause notice within the aforesaid period by enclosing all relevant documents. 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.

7. W.P.No.15211 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.16544 and 16545 of 2024 are closed.

19.06.2024
(1/5)

rna
Index : Yes / No

Internet : Yes / No
Neutral Citation: Yes / No

To

The Assistant Commissioner (ST),
RG Street Circle,
Commercial Taxes Buildings,
Dr.Balasundaram Chettiar Road,
Coimbatore 641 018.

SENTHILKUMAR RAMAMOORTHY,J

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