IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **24.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.No.15385 of 2024
and W.M.P.Nos.16721 & 16722 of 2024

Tvl. S.S.Metals,
Rep by its Proprietor Mr.A.Syed Shikkandar,
64 A, M.K.N.Road, Guindy, Chennai – 32. ... Petitioner

-vs-

The State Tax Officer,
Alandur Assessment Circle,
I.C.T & R.D Buildings, [South Tower],
IIIrd Floor, Room No.352,
Nandanam, Chennai – 35. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, calling for the records on the files of the respondent proceedings in GSTIN: 33CHHPS1611K1ZD / 2018-19 dated 07.03.2024 and quash the same as illegal, invalid violated the principles of natural justice.

For Petitioner : Mr.D.Vijayakumar

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

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ORDER

In this writ petition, an assessment order dated 07.03.2024 is assailed on the ground of breach of principles of natural justice.

2. The petitioner had availed of Input Tax Credit (ITC) in relation to supplies received from Royal Steel Traders. Proceedings were initiated against the petitioner by issuing show cause notice dated 09.08.2023. In such show cause notice, it was alleged that the petitioner is not entitled to ITC because the supplier was non existent. The petitioner replied to the show cause notice on 08.11.2023 and asserted that only eligible ITC was availed of. In order to establish that the supply was genuine, the petitioner enclosed the tax invoice, bank statement, e-way bill and the GSTR 2A. The impugned order

was issued in these facts and circumstances.

3. Learned counsel for the petitioner submits that ITC was denied to the petitioner in spite of the petitioner submitting the relevant tax invoice, e-way bill and bank statement. In fact, learned counsel points out that the supplier had filed returns during the relevant period, and that these supplies are reflected in the GSTR 2A. In support of the contention that ITC cannot be denied in these circumstances, learned counsel relies upon several judgments, including the judgment of the Madurai Bench of this Court in *DY Beathal Enterprises v. State Tax Officer*, order dated 24.02.2021 in W.P(MD) No.2127 of 2021.

4. Mr.V.Prasanth Kiran, learned Government Advocate, accepts notice for the respondent. He submits that the burden of proof is on the tax payer to establish entitlement to ITC, including by showing movement of goods. He submits that the petitioner did not provide documents such as lorry receipts or weighment slips to establish

actual movement of goods. In the absence thereof, he contends that the reversal of ITC was entirely in consonance with Section 16(2)(b) of applicable GST statutes.

5. The petitioner's reply is on record. By such reply, the petitioner states that the supplier was carrying on business and that the purchase was genuine. As contended by learned counsel for the petitioner, the reply indicates that the tax invoice, e-way bill, bank statement and ledger account were annexed thereto. The assertion that the ITC availed of by the petitioner is reflected in GSTR 2A is not denied by the respondent.

6. In the impugned order, in relevant part, it is recorded as under:

> *"The findings of non-existence and indulgence in fake business transactions of Tvl. Royal Steel Traders was not only based on the reports of the Inspection Officials, but also based on the prior investigation, scrutiny and analysis by the Department's Investigation Wing which is normal in the course of any inspection process.*

The document requested is only an official information and instructions to proceed further action by the proper officer.

The reasons for proposing reversal of input tax credit on the grounds that the taxpayer has wrongly availed and utilized input tax credit by issuing invoices only without movement of goods has been clearly mentioned in the intimation notice. Though the taxpayer stated that they possess documents like invoices, it has been substantiated beyond doubt by the intelligence authorities that the suppliers are indulged in fraudulent activities. The suppliers have issued fake invoices and hence it is meaningless for recipients to state that they possess valid documents.

But mere reflections of inward supplies in GSTR-2A, does not satisfy the condition of Section 16(2)(b) of the CGST Act 2017/TNGST Act 2017 for the above said inward supply transactions, since the suppliers issued fake invoices and passed on the fake input tax credit without movement of goods to the recipients."

7. The first extract with regard to fake invoices is in the nature of a conclusion that the supplier issued fake invoices. In spite of the petitioner requesting for the documentary basis for such conclusion, the respondent refused to provide the same but proceeded to record

the conclusion that the supplier's invoices were fake and that it is meaningless for the recipient to state that he is in possession of valid documents. Without the respondent stating the basis for the conclusion that fake invoices were issued and submitting relevant documents, it is not possible for the petitioner to respond to the allegation. As regards the second conclusion that the petitioner did not satisfy the requirements of Section 16(2)(b), it appears from the documents submitted by the petitioner that lorry receipts and weighment slips were not provided. In that respect, the petitioner failed to fulfill the obligation of establishing actual movement of goods in terms of Section 16(2)(b).

8. In the facts and circumstances outlined above, re-consideration is necessary subject to putting the petitioner on terms. On instructions, learned counsel for the petitioner states that the petitioner agrees to remit 20% of the disputed tax demand as a condition for remand, after giving credit to amounts, if any, already

remitted by the petitioner.

9. For reasons set out above, impugned order dated 07.03.2024 is set aside subject to the condition that the petitioner remits 20% of the disputed tax demand, in the aggregate, after giving credit to amounts remitted earlier within ***three weeks*** from the date of receipt of a copy of this order. In case the respondent intends to proceed against the petitioner on the basis that the supplier's invoices were fake, the respondent is directed to provide particulars and any documents relied upon in such regard so as to enable the petitioner to respond thereto. Upon receipt of such communication with documents, the petitioner is permitted to submit a reply within ***three weeks*** from the date of receipt of such documents. Upon receipt of such reply and on being satisfied that 20% 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 response to the above mentioned

communication and documents.

10. W.P.No.15385 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.16721 and 16722 of 2024 are closed.

24.06.2024
(3/4)

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

To

The State Tax Officer,
Alandur Assessment Circle,
I.C.T & R.D Buildings, [South Tower],

IIIrd Floor, Room No.352,
Nandanam, Chennai – 35.

<u>SENTHILKUMAR RAMAMOORTHY,J</u>

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