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W.P.No.17112 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.17112 of 2024
and W.M.P.Nos.18877 & 18879 of 2024

Tvl. Slitina Metal Sales LLP,
Represented by its Partner G.Sudha,
SF No.149, Sathya Nagar, Ganapathy Post,
Coimbatore - 641 006.

... Petitioner

-VS-

The Assistant Commissioner (ST)(FAC),
Ganapathy Circle, Dr.Balasundaram Road,
Coimbatore - 641 018.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, call for the records pertaining to the impugned assessment order in Form GST DRC-07 bearing reference number ZD330424228295J/2018-19 dated 28.04.2024, issued by the respondent and quash the same.



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For Petitioner : Mr.C.Derrick Sam

WEB COPY For Respondent : Mrs.K.Vasanthamala, GA (T)

ORDER

An order in original dated 28.04.2024 is challenged on multiple grounds. The petitioner received show cause notice dated 28.12.2023 in respect of two issues. The first issue dealt with therein was the claim of Input Tax Credit in respect of allegedly ineligible commodities as per sub-section (5) of Section 17 of applicable GST statutes. The second issue was the claim of ITC for supplies from cancelled dealers, who had not remitted tax dues. The petitioner replied to such show cause notice on 12.01.2024. Along with such reply, the petitioner attached the invoice and e-way bills relating to the supplies from M/s.VK Impex. The petitioner also enclosed proof of filing of returns by the said supplier. As regards the first issue, it was stated that MS Scrap was purchased from three suppliers in furtherance of business. The impugned order was issued in these



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facts and circumstances on 28.04.2024.

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2. Learned counsel for the petitioner submits that the impugned order contains no discussion or finding with regard to the first issue relating to availment of Input Tax Credit in respect of MS Scrap. As regards the second issue, he submits that the petitioner was not called upon to show cause in respect of movement of goods. He points out that the show cause notice referred to the fact that the supplier's registration was cancelled and that such supplier had not paid taxes. Apart from enclosing the relevant sales invoices and e-way bills, he submits that the petitioner also enclosed proof of payment of tax by the supplier along with the reply dated 12.01.2024.

3. Mrs.K.Vasanthamala, learned Government Advocate, accepts notice for the respondent. By relying on Sections 16 and 155 of applicable GST statutes, she submits that the burden of proof with regard to Input Tax Credit is imposed on the tax payer. Since the petitioner failed to discharge such burden by submitting documents



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such as lorry receipts, weightment slips and the like, she submits that the assessing officer was constrained to confirm the tax proposal.

4. On perusal of the show cause notice, it is evident that two tax proposals are dealt with therein. The first relates to availment of Input Tax Credit in respect of allegedly ineligible commodities in terms of Section 17(5) of applicable GST statutes. As regards the second issue, the petitioner was called upon to show cause as to why Input Tax Credit should not be recovered in view of the supplier concerned not paying tax on such supplies. The petitioner responded to both these issues. As regards the first issue, the petitioner stated that materials classified under HSN Code 7204 were procured and that such materials do not fall within the scope of Section 17(5) since they were used in furtherance of business. The petitioner enclosed relevant invoices and e-way bills. With regard to the second issue, the petitioner pointed out that a supplier, whose registration certificate was cancelled cannot generate e-way bills. The petitioner enclosed relevant invoices, e-way bills and the supplier's returns as



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proof of payment of tax by such supplier.

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5. In the impugned order, there are no findings in respect of the first issue. As regards the second issue, the tax proposal was confirmed on the ground that the petitioner did not establish movement of goods by producing lorry receipts, weighment slips and payments made to the supplier. None of these documents were called for in the show cause notice which proceeded on a completely different basis. Therefore, the impugned order cannot be sustained.

6. For reasons set out above, impugned order dated 28.04.2024 is set aside and the matter is remanded for re-consideration. The petitioner is permitted to submit an additional reply by enclosing all relevant documents with regard to movement of goods. Such additional reply shall be submitted within *fifteen days* from the date of receipt of a copy of this order. Upon receipt thereof, the respondent is directed to provide a reasonable opportunity to the petitioner, including a personal hearing, and thereafter issue a fresh



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order within *three months* from the date of receipt of the petitioner's additional reply.

7. W.P.No.17112 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.18877 and 18879 of 2024 are closed.

15.07.2024

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

To

The Assistant Commissioner (ST)(FAC),
Ganapathy Circle, Dr.Balasundaram Road,
Coimbatore - 641 018.

SENTHILKUMAR RAMAMOORTHY,J

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