



WEB COPY



W.P.No.17376 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.17376 of 2024
and
W.M.P.Nos.19144 & 19145 of 2024

Sun Steel

Represented by the Proprietor

Mr.Umar Farook

... Petitioner

Versus

The Deputy State Tax Officer-II,
Oragadam Assessment Circle
Integrated Commercial Taxes Office
No.4/109, Chennai Bangalore Highways,
Nazarathpettai,
Chennai 600 123.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records from the file of the respondent in impugned order in Reference No.ZD330823163320Q in GSTIN: 33ABCPU3226H1ZU dated 28.08.2023 passed for the F.Y. 2020-21 and quash the same as without jurisdiction, erroneous on facts and violative of principles of natural justice.



W.P.No.17376 of 2024

For Petitioner : Mr. B. Sivaraman

For Respondent : Mr. T.N.C. Kaushik,
Additional Government Pleader (Tax)

ORDER

An order in original dated 28.08.2023 is assailed on the ground that the petitioner did not have a reasonable opportunity to contest the tax demand on merits.

2. By asserting that the show cause notice and other communications were uploaded in the “View Additional Notices and Orders” tab on the GST portal, and not communicated to the petitioner through any other mode, the present writ petition was filed. The petitioner asserts that he was unaware of proceedings because physical service was not effected and, therefore, he could not participate in the same.

3. Learned counsel for the petitioner submits that the tax proposal relates to the alleged wrongful availment of Input Tax Credit (ITC). He points out that such proceedings arose on account of the cancellation of GST registration of the supplier with retrospective effect. He also points out that



W.P.No.17376 of 2024

relevant tax invoices, e-way bills and other relevant documents are available and that the petitioner availed of eligible ITC, which tallies with the ITC reflected in GSTR 2A. On instructions, learned counsel for the petitioner agrees to remit 10% of the disputed tax demand as a condition for remand.

4. Mr. T.N.C. Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He submits that principles of natural justice were complied with by issuing show cause notice dated 19.06.2023 and by offering personal hearing to the petitioner.

5. On perusal of the impugned order, it is evident that the tax proposal was confirmed because the petitioner did not reply to the show cause notice. By taking into account the assertion that non-participation was on account of not being aware of the proceedings, it is just and appropriate that the petitioner be provided an opportunity to contest the tax proposal on merits, subject to the petitioner being put on terms.

6. In view of the above facts and circumstances, the impugned order



W.P.No.17376 of 2024

dated 28.08.2023 is set aside and the matter is remanded for reconsideration subject to the condition that the petitioner remits 10% of the disputed tax demand as agreed to within two weeks from the date of receipt of a copy of this order. Within the aforesaid period, the petitioner is also permitted to submit a reply to the show cause notice. Upon receipt thereof 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 two months from the date of receipt of the petitioner's reply.

7. The Writ Petition is disposed of on the above terms. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

03.07.2024
(3/4)

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4/6



W.P.No.17376 of 2024

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