IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 03.09.2024
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**

W.P.No.19607 of 2024
and
W.M.P.Nos.21467 & 21468 of 2024

Manojkumar Sureshkumar
Proprietor of Tvl. MK Traders. ...Petitioner

Vs.

The Assistant Commissioner (ST) (FAC)
Tiruppur Central – II Circle, Tiruppur -II
Tamil Nadu. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records from the files of the respondent and to quash the impugned order under Section 74 of the GST Act dated 17.02.2024 and the consequential summary of the order in Form GST DRC-07 dated 17.02.2024 for the FY 2021-22 both passed by the respondent and both having reference number ZD330224101366Y.

For Petitioner : Mr.N.V.Balaji

For Respondent : Mr .C.Harsha Raj
Additional Government Pleader (T)

Order

The challenge in this Writ Petition is to the order issued by the respondent under Section 74 of the GST Act dated 17.02.2024 and the consequential summary of the order in Form GST DRC-07 dated 17.02.2024 for the FY 2021-22.

2. The petitioner is a registered taxpayer on the file of the respondent. The petitioner filed their returns for the AY 2021-22, but, for FY 2021-22 the petitioner has been issued with an intimation dated on 04.08.2022 indicating various discrepancies that the petitioner filed their response on 18.08.2022, however, a show cause notice was issued to the petitioner dated 04.11.2022, to which, the petitioner filed a reply reiterating the contentions as stated in the response dated 18.08.2022, but, the respondent without considering the said reply, passed the impugned order. Hence, the present Writ Petition.

3. Mr.N.V.Balaji., learned counsel for the petitioner would submit that the petitioner, on receipt of the show cause notice, filed a detailed reply along with necessary documents, however, the respondent, without considering the reply in a proper perspective, passed the impugned order, hence, the learned counsel prayed for setting aside the impugned order.

4. Per contra, Mr.C.Harsha Raj, learned Additional Government Pleader (T) raised strong objection by contending that in the present case, the issue was raised with regard to wrong availment of ITC by producing fake invoices, as the petitioner has not produced e-way bill, lorry receipts, Chartered Accountant certificate, the ITC availed on the inputs received from the petitioner's supplier, viz. SAK Traders is rejected as ineligible, as the said party is a non-existing supplier, therefore, unless and otherwise, the petitioner produces those documents, even this Court set aside the order, no useful purpose would be achieved, hence, requested this Court to dismiss the Writ Petition, or else to direct the petitioner to avail alternate remedy by way of appeal challenging the order dated 17.02.2024.

5. I have given due considerations to the submissions made on either side and perused the materials available on record.

6. In the present case, it is not the issue that the petitioner has not been issued with any notice nor was heard before passing the impugned order, in the case on hand, it is the grievance of the petitioner that on receipt of the show cause notice dated 04.11.2022, reply was filed by the petitioner dated 30.11.2022 and personal hearing opportunity was also afforded to the petitioner, however, the said reply was not properly considered, in spite of supportive documents filed by the petitioner with regard to the purchase made.

6.1 No doubt, it is true that Form DRC-2A was filed before the Authority concerned, but, the issue is with regard to fake invoices, as, it is alleged that the purchase has been made from a non-existing supplier. Therefore, the respondent issued notice dated 04.08.2022, pointing out the discrepancies and was expecting the petitioner to file relevant documents, such e-way bills, Lorry receipts, certificate from Chartered Account, but, the petitioner failed to furnish those details. Even when this Court posed a question as to whether the petitioner is in possession of such documents, the learned counsel appearing for the petitioner fairly admitted that the petitioner is handicapped on account of non-availability of relevant documents so as to prove that at the time of purchase made by them the supplier was in existence. Therefore, under these circumstances, as rightly pointed out by the learned Additional Government Pleader (T) for the respondent, even if the matter is remanded to the respondent for re-consideration, no useful purpose would be achieved, and only recourse available to the petitioner is to approach the Appellate Authority by way of an Appeal challenging the orders dated 17.02.2024, inasmuch as, in the present case, there is no violation of principles of natural justice arisen for setting aside the impugned order, and hence, the petitioner has to be necessarily, relegated to the Appellate Authority for agitating the issue by way of Appeal.

7. In the light of the above, this Court, while dismissing the Writ Petition is granting permission to the petitioner to approach the Appellate Authority by way of Appeal challenging the orders dated 17.02.2024 within a period of 30 days from the date of receipt of a copy of this order, who shall entertain the same, without being influenced by any of the observations made by this Court in the present Writ Petition, nor reject the same on the ground of limitation, and pass orders in accordance with law.

8. In the result, the Writ Petition is dismissed with liberty as stated supra. No costs. Consequently, connected Miscellaneous Petitions are closed.

03.09.2024

sd

Index : yes/no
Neutral Citation : yes/no

To

The Assistant Commissioner (ST) (FAC)
Tiruppur Central – II Circle, Tiruppur -II
Tamil Nadu.

Krishnan Ramasamy,J.,

sd

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