IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2024

CORAM :

**THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

W.P.Nos.18630, 18635, 18639 & 18641 of 2024
and
W.M.P.Nos.20430, 20431, 20437, 20439, 20444, 20445, 20449 & 20451 of 2024

**In all W.Ps. :**
M/s. Krishna Iron & Steen Company,
Rep.by its Partner, Mr. K. Krishnakumar. ... Petitioner

Versus

1.The Assistant Commissioner (ST),
Annur Assessment Circle, Annur, Coimbatore.

2.The State Tax Officer,
Survey Unit – 1 (Investigation),
Coimbatore. ... Respondents

**Common Prayer** : Writ Petitions filed under Article 226 of the Constitution of India pleased to issue a Writ of Certiorarified Mandamus, to call for the records of the First Respondent herein in GSTN 33AANFK7580J1ZU dated 18.03.2024 in Form DRC-07 for the Assessment Years 2018-19, 2019-20, 2020-21 and 2021-22 respectively, by quashing the proceedings with the direction to the First Respondent herein to consider and/or pass orders in the Rectification petition dated 05.06.2024.

**In all W.Ps. :**

For Petitioner : Mr. K. A. Parthasarathy

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

**COMMON ORDER**

In these writ petitions, assessment orders relating to assessment years 2018-19, 2019-20, 2020-21 and 2021-22 are challenged.

2. Pursuant to an inspection, queries were raised in respect of multiple issues. The petitioner responded to such queries by statement dated 19.09.2022 of Thiru. K. Krishnakumar, one of the partners of the petitioner. Documents were also annexed to such statement. By further reply dated 26.10.2022, the petitioner submitted replies and enclosed documents. Thereafter, pursuant to the findings of the inspection officer, show cause notices were issued to the petitioner. Upon receipt thereof, the petitioner requested for further time on about two or three occasions. The impugned orders were issued in these facts and circumstances. Shortly thereafter, the petitioner filed rectification petitions by asserting that there are errors apparent. Such rectification petitions were not acted

upon. The present writ petitions were filed in the said facts and circumstances.

3. Learned counsel for the petitioner refers to the responses to the queries raised in the course of inspection. He submits that these responses were not taken into consideration while issuing the impugned orders. He points out that about four issues are common to these writ petitions. These issues *inter alia* pertain to a mismatch between the petitioner's GSTR 3B and GSTR 1 returns, the disparity between the Input Tax Credit reflected in the GSTR 2A and the value of e-way bills and cancelled e-way bills. He also points out that the fifth issue relating to post supply discount arises in assessment period 2019-20. As regards the disparity between the aggregate value of e-way bills and the purchase value reflected in the GSTR 2A, learned counsel submits that the petitioner had explained that e-way bills need not be issued in respect of all transactions. For instance, e-way bills need not be issued if the transactions value is less than Rs.1 lakh. According to learned counsel, the petitioner had also raised the defense that an e-way bill is not necessary if the distance of transportation is less than 10 kms and that

only this contention was considered in the impugned order. As regards the cancelled e-way bills, he points out that the list of cancelled e-way bills along with reasons for cancellation and the corrected e-way bill numbers was provided. He points out that this was disregarded.

4. By referring to the orders impugned herein, learned counsel points out that the tax proposals were confirmed under Section 74 of applicable GST enactments and although the ingredients of Section 74 are absent both in the show cause notices and the impugned orders. He also submits that the findings of the processing officer (i.e. the inspection officer) were extracted in the impugned order and that, eventually, the findings of the proper officer were recorded briefly in a table at the foot of the order. He contends that the proper officer was under an obligation to independently apply his mind and not proceed entirely on the basis of the findings of the inspection officer. In support of this contention, he relies upon the judgments of this Court in *Farida Leather Company v. Commercial Tax Officer*, *2020 82 GSTR 452 (Mad)* and *Tarun Creation v. Commercial Tax Officer, (2020) 82 GSTR 449 (Mad)*. He also relies upon Circluar No.12/2022 dated 26.09.2022 with regard to the grant of

reasonable time to file a reply and the requirement for a communication of the decision granting or refusing extension of time.

5. With regard to assessment year 2019-20, he points out that the impugned order contains a grave computational error whereby liability of Rs.19,05,10,564/- was imposed instead of Rs.13,62,400/-. Without prejudice to the above contentions, he submits that the petitioner agrees to remit 5% of the disputed tax demand in respect of each defect dealt with in the impugned order subject to the caveat that as regards defect no.2 for assessment year 2019-20, 5% would be paid on Rs.13,62,400/- instead of Rs.19,05,10,564/-.

6. Mr. T.N.C. Kaushik, learned Additional Government Pleader, accepts notice for the respondent. He submits that the petitioner did not upload the replies that were submitted in the course of inspection. Consequently, such replies were not available on the common portal. As regards the adjudication proceedings, he submits that the petitioner appeared before the adjudicating officer and merely requested for time repeatedly. After granting about three months' time, he submits that the

impugned orders were issued.

7. On perusal of the orders impugned herein, it is noticeable that such orders refer to the inspection report dated 21.12.2022. The orders also extracted the findings of the processing officer pursuant to such inspection in relation to each defect dealt with therein.

8. The petitioner has placed on record the statement dated 19.09.2022 and the reply dated 26.10.2022. Although the inspection report and the findings of the inspection officer were adverted to in the impugned order, the petitioner's responses in the course of inspection do not find mention therein. It also appears that the tax proposals were confirmed under Section 74 of applicable GST enactments.

9. As regards assessment period 2019-20, on examining the order, with regard to defect no.2 relating to the mismatch between purchase value as per GSTR 2A and aggregate value of e-way bills, the tax dues as per the e-way bill was Rs.4,01,89,368/-, whereas, it was Rs.4,15,51,852/-

as per GSTR 2A. Liability, if any, should have been imposed on the difference between these two figures, which amounts to Rs.13,62,400/-. The petitioner cannot be absolved of all responsibility for the current state of affairs since the petitioner failed to reply on merits during the adjudication process although about three months' time was provided after the show cause notice. For such reason, it is also necessary to put the petitioner on terms.

10. For reasons aforesaid, the orders impugned herein are set aside on condition that the petitioner remits 5% in relation to each head of demand with the qualification that, as regards the defect no.2 in assessment year 2019-20, 5% shall be paid on Rs.13,62,400/- and not on the amount specified in the impugned order. Such remittance shall be made within 15 days from the date of receipt of a copy of this order. Within the said period, the petitioner is permitted to submit a reply in respect of the show cause notices. On receipt of the petitioner's reply and on being satisfied that 5% was remitted in the manner specified above, the respondent is directed to provide a reasonable opportunity, including a personal hearing, and thereafter issue fresh orders within three months

from the date of receipt of the petitioner's reply.

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

**30.07.2024**

Index : No
Speaking Order : Yes
Neutral Case Citation: No

klt

To

1.The Assistant Commissioner (ST),
Annur Assessment Circle,
Annur, Coimbatore.

2.The State Tax Officer,
Survey Unit – 1 (Investigation),
Coimbatore.

**SENTHILKUMAR RAMAMOORTHY,J.**

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