IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

WP.Nos.21575, 21576, 21578, 21580 and 21581 of 2024
WMP.Nos.23538 to 23540, 23542 and 23544 to 23549 of 2024

M/sMahendra Metal Corporation, represented by its Proprietor, Rajkumar Jain, Chennai-3 Petitioner-All WPs

Vs

The Deputy State Tax Officer
Moore Market Assessment Circle,
Chennai Respondent-All WPs

Prayer:- These Writ Petitions are filed, under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for the records relating to the orders dated 29.01.2024 in GSTIN No.33AAFPJ9173Q1Z3/2018-19, GSTIN No.33AAFPJ9173Q1Z3/2019-20, GSTIN No.33AAFPJ9173Q1Z3/2020-21 and GSTIN No.33AAFPJ9173Q1Z3/2021-22 and GSTIN No.33AAFPJ9173Q1Z3/2022-23 and the consequential impugned rectification order dated 12.07.2024 in GSTIN No.33AAFPJ9173Q1Z3/2018-19, GSTIN No.33AAFPJ9173Q1Z3/2019-20, GSTIN No.33AAFPJ9173Q1Z3/2020-21 and GSTIN No. 33AAFPJ9173Q1Z3/2021-22 and GSTIN No.33AAFPJ9173Q1Z3/2022-23 passed by the Respondent and to quash the same.

For Petitioner : Mr.J.Ashish

For Respondents : Mr.V.Prashanth Kiran, Government Advocate

ORDER

1. These Writ Petitions are filed for issuance of Writ of Certiorari to call for the

records relating to the orders dated 29.01.2024 in GSTIN No.33AAFPJ9173Q1Z3/2018-19, GSTIN No.33AAFPJ9173Q1Z3/2019-20, GSTINNo.33AAFPJ9173Q1Z3/2020-21 and GSTIN No.33AAFPJ9173Q1Z3/ 2021-22 and GSTIN No.33AAFPJ9173Q1Z3/ 2022-23 and the consequential impugned rectification orders, dated 12.07.2024 in GSTIN No.33AAFPJ9173Q1Z3/ 2018-19, GSTIN No.33AAFPJ9173Q1Z3/2019-20, GSTIN No.33AAFPJ9173Q1Z3/2020-21 and GSTIN No. 33AAFPJ9173Q1Z3/ 2021-22 and GSTIN No.33AAFPJ9173Q1Z3/2022-23 passed by the Respondent and to quash the same.

2. The case of the Petitioner is that the Petitioner is a Proprietorship Firm and an Assessee on the file of the Respondent. The Respondent issued show cause notices dated 28.07.2023 for the discrepancies in Input Tax Credits in respect of the assessment years 2018-19, 2019-20, 2020-21, 2021-22 and 2022-23. Though the Petitioner filed replies, the Respondent issued the reminder notices dated 11.01.2024, fixing the date of personal hearing on 18.01.2024 and granting time till 19.01.2024 to file additional replies. The Petitioner sought two weeks time by replies dated 18.01.2024, i.e. till 01.02.2024. Thereafter, the impugned orders dated 29.01.2024 were passed in respect of each of the assessment years, confirming the show cause notices. Thereafter, in the rectification petitions filed by the Petitioner, the consequential impugned orders dated 12.07.2024 were passed, rejecting the rectification petitions. Hence, these Writ Petitions have been filed, seeking the reliefs as stated above.

3. This Court heard the learned counsel on either side and also perused material records placed before this Court.
4. The learned counsel for the Petitioner would submit that pursuant to the receipt of reminder notices dated 11.01.2024, fixing the date of personal hearing on 18.01.2024 and granting time till 19.01.2024 to file additional replies, though the Petitioner sought for two weeks time to file the same, i.e. till 01.02.2024 by replies dated 18.01.2024, the impugned orders were passed on 29.01.2024 itself even before the expiry of the requested time and that no sufficient opportunity of personal hearing was given and hence, it can be stated that the impugned orders were passed, without affording an opportunity of personal hearing to the Petitioner, thereby violating the principles of natural justice. The learned counsel would further submit that the Petitioner would be able to establish their case if an opportunity is provided and that the Petitioner agrees to make a payment of 10% of the disputed tax demand in respect of each of the impugned assessment years.
5. The learned Government Advocate for the Respondent would submit that sufficient opportunity was afforded to the Petitioner and that since the replies were filed without any documents, once again the Respondent issued reminder notices and he would fairly submit that no personal hearing was afforded to the Petitioner before passing the impugned orders and that if this Court is inclined to set aside the impugned orders, appropriate orders may be passed, by putting the Petitioner on terms.
6. Upon examining the impugned orders and the materials placed before this

Court, it is evident that it is not the case of the Petitioner that the show cause notices uploaded in the Portal were not noticed by the Petitioner. It is also the case of the Petitioner that to the show cause notices issued through Portal, replies were sent to the Respondent. But, again when the Respondent issued reminder notices, dated 11.01.2024, calling for the Petitioner to file additional replies on or before 19.01.2024 and fixing the date of personal hearing on 18.01.2024, it is the case of the Petitioner that the Petitioner sought for time of two weeks for filing additional replies by replies dated 18.01.2024.

7. By the said reminder notices, time was granted till 19.01.2024 to file replies and a personal hearing was fixed on 18.01.2024. In normal course after completion of pleadings only, personal hearing will be fixed. But, in this case, before receiving a reply, the date of personal hearing was fixed as stated above i.e. one day prior to the last date of filing replies. Even immediately by representations dated 18.01.2024, the Petitioner sought time to file replies by two weeks i.e. till 01.02.2024. But, it is evident that the impugned orders were passed on 29.01.2024 even before the expiry of the two weeks as sought for by the Petitioner on 01.02.2024.

8. It is settled law that if an Assessing Officer intends to confirm a show cause notice after filing of a reply by way of an assessment order, it is the bounden duty of the Assessing Officer to provide an opportunity of personal hearing before passing an assessment order, but, in the present cases, it is lacking. Hence, this Court is of the view that the impugned orders came to be passed,

without affording opportunity of a personal hearing to the Petitioner to establish their case, thereby violating the principles of natural justice. In such view of the matter, it is just and necessary to provide an opportunity of personal hearing to the Petitioner to establish their case, on merits and in accordance with law, however, by putting the Petitioner on terms.

9. For the reasons stated above and the above said discussions, the matters in all these Writ Petitions are remanded back to the Respondent for consideration afresh, by setting aside the impugned orders in all these Writ Petitions on condition that the Petitioner shall pay 10% of the disputed tax demand, for each of the assessment years, within a period of six weeks from the date of receipt of a copy of this order. Within two weeks thereafter, the Petitioner is permitted to submit additional replies to the impugned show cause notices, by enclosing all relevant documents in respect of each of the assessment years.

10. Upon receipt of such replies and upon being satisfied that 10% of the disputed tax demand in respect of each of the assessment years was received, in all these Writ Petitions, the Respondent is directed to issue separate notices of personal hearing, giving not less than 14 days time from the date of such notices and consider the additional replies along with the relevant documents to be submitted by the Petitioner and pass fresh orders, on merits and in accordance with law, within a period of eight weeks from the date of receipt of the Petitioner's replies.

11. It is also made clear that in order to enable the Petitioner to pay 10% of the

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disputed tax amount as ordered by this Court, if sufficient amount is available in the bank account of the Petitioner to meet out the above conditional order, the Respondent is directed to lift the bank attachment of the Petitioner if any request is made, as per the relevant Rules, only at the request of the Petitioner.

12. With the above directions and terms, these Writ Petitions are allowed. No costs. Consequently, the connected MPs are closed.

12.08.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Neutral Citation: Yes/No
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To

The Deputy State Tax Officer
Moore Market Assessment Circle,
Chennai

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