IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

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THE HONOURABLE Mr.JUSTICE KRISHNAN RAMASAMY

W.P.No.22641 of 2024 &

WMP.No.24675 of 2024

M/s.Max Hair Clinic Pvt. Ltd.,
21, Nageswar Rao Road,
Nungambakkam, Chennai – 600 034.
rep. by its Director Mr.Saran Vel .. Petitioner

Vs

The State Tax officer,
Valluvarkottam Assessment Circle,
4th Floor, Greams Road, Chennai – 600 006. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records pertaining to the impugned ex-parte order No.GSTIN33/AAJCM2594H2ZA/2022-23 dated 15.02.2024 passed by the respondent herein and to quash the same for having been passed contrary to law and in gross violation of the principles of natural justice.

For Petitioner : Mr.N.Viswanathan

For respondent : Mr.T.N.C.Kaushik
Additional Government Pleader [T]

O R D E R

This writ petition is filed challenging the impugned ex-parte order No.GSTIN33/AAJCM2594H2ZA/2022-23 dated 15.02.2024 passed by the respondent herein and to quash the same.

2. The learned counsel appearing for the petitioner would submit that they purchased certain goods from a registered supplier, namely, Haresh Enterprises who supplied the goods and provided the tax invoices and collected the tax from them. The tax so collected by the dealer was paid to the Government account and reported in their GSTR 3 B returns on account of which, the same was reflected in their auto populated GSTR 2 A returns.

3. He would also submit that the respondent merely on the basis of the fact that the registered supplier's GST rgistration was suspended on a subsequent date, issued a show cause notice to the petitioner asking them to pay entire input tax credit availed on the basis of the invoices issued by the said dealer along with interest and called for explanation from the petitioner. The petitioner has paid the entire tax on 09.09.2023, however, as the interest was not quantified, the interest alone has not been paid. While so, the respondent passed the impugned exprte Order invoking section 74 of the GST Act without

affording any opportunity of personal hearing or considerering the mandate of Section 73 or 74 of the GST Act which is in gross violation to the principles of natural justice and hence he would urge this Court to set aside the impugned order.

3. Per contra, learned Additional Government Pleader appearing for the respondent would submit that the petitioner has been provided ample opportunity and he referred to show cause notice dated 08.08.2023, wherein, the petitioner was directed to explain the reasons towards the discrepancies within 30 days from the date of the receipt of the notice, however, the petitioner has not submitted the explanation. Hence, the respondent again issued a reminder notice dated 01.11.2023, providing a personal hearing opportunity on 08.11.2023, however, the petitioner has not availed the same. He neither appeared nor submitted his reply. Hence, the impugned Order has been rightly passed by the respondent, which requires no interference.

4. I have given due consideration to the submissions made by the learned counsel for the petitioner as well as the learned Additional Government Pleader for the respondent.

5. According to the respondent as could be seen from the Show cause notice dated 08.08.2023 issued under Rule 142(1)(a) of the Act, that the dealer of the petitioner with whom, they purchased the goods, namely, Tvl.Haresh Enterprise, was doing bill trading without actual supply of goods and their registration was suspended with effect from 26.05.2023 by the concerned Registering Authority. While so, the petitioner has wrongly availed and utilized input tax credit by using fake invoices without movement of goods, which is treated as a fraudulent activity and willful misstatement. Hence, the petitioner was directed to reverse the input tax credit along with interest and penalty and to explain the reasons for the discrepancies pointed out in the show cause notice, within 30 days from the date of receipt of the notice, failing which, proceedings under Section 74 would be initiated against the petitioner without making any further reference. But there was no response from the petitioner, which prompted the respondent to issue a reminder notices dated 01.11.2023 to the petitioner, providing personal hearing on 08.11.2023. The respondent also issued another reminder notice on 05.02.2024.

6. It is pertinent to note that the petitioner has not availed the opportunity of personal hearing nor submitted the explanation clarifying the discrepancies pointed out in the show cause notice. While so, the learned counsel for the petitioner misrepresented to this Court that no opportunity of personal hearing

was provided to the petitioner. Further, without clarying the discrepancies pointed out in the show cause notice and allowing the respondent to pass the impugned order dated 15.02.2024 by the respondent, the petitioner come forward with the present Writ Petition.

7. A perusal of the impugned order dated 15.02.2024 reveals that the purchase made by the petitioner found to be based on fake invoice and wrongly availed input tax credit and hence, by invoking Section 74, the respondent demanded the total tax liability of Rs.38,361/- including penalty and interest. The respondent has taken into consideration the payment made by the petitioner towards CGST and SGST through DRC-03 dated 09.09.2017, however, since there was no payment of tax on the supply made by the supplier, the respondent treated the purchase made by the petitioner was on fake invoices and thereby, invoked Section 74 of the Act and rightly passed the impugned order after affording ample opportunity to the petitoner. Therefore, this Court does not find any infirmity in the impugned order passed by the respondent. In fact, as against the impugned order passed by the respondent under Section 74 of the Act, the petitioner is having efficacious appeal remedy under Section 107 of the Act and without exhausting such remedy, the petitioner has filed the present Writ Petition, which is not maintainable on this ground also.

KRISHNAN RAMASAMY, J.

vrc

8. Accordingly, this Writ Petition fails and it is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

09.09.2024

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Index : Yes/No
Neutral Citation : Yes/No

To

The State Tax officer,
Valluvarkottam Assessment Circle,
4th Floor, Greams Road, Chennai – 600 006.

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