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W.P. No.32773 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.32773 of 2024

and

W.M.P. No.35608 and 35611 of 2024

M/s.Prime Gold International Limited,
Represented by its Accounts Manager,
L.Srinivasan,
Uliveeranapally Village,
Hosur-Thally Main Road,
Hosur-635 114, Krishnagiri District

... Petitioner

Vs.

- 1.The Deputy State Tax Officer (Intelligence),
Adjudication and Legal Wing,
Office of the Joint Commissioner (State Taxes),
Intelligence Division,
No.3/47, Sapthagiri Complex,
Thorapallai Agraharam Village,
Hosur-635 109, Krishnagiri.
- 2.The State Tax Officer,
Inspection Cell-IV,
Office of the Deputy Commissioner (ST) Intelligence,
Salem-636 007.
- 3.The Joint Commissioner (CT)- Intelligence,
Intelligence Division,
Commercial Taxes Building,
Fort Main Road, Salem-636 001.

... Respondents



W.P. No.32773 of 2024

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the connected records pertaining to the impugned proceedings of the 1st Respondent herein made in Reference No.33AACCK3755F1ZR/2021-22 dated 29.07.2024 and quash the same as illegal.

For Petitioner : Mr.N.Sriprakash
for Mr.Manoharan S.Sundaram

For Respondents : Mr.TNC Kaushik
Additional Government Pleader

ORDER

The present writ petition is filed challenging the order dated 29.07.2024 on the limited ground that the impugned order has been passed without application of mind to the objections filed by the petitioner and thus suffers from the vice of non-application of mind to the materials on record.

2. The petitioner herein is engaged in the manufacture and supply of Billets and TMT Bars. The petitioner is registered under the Goods and Services Tax Act, 2017 and filed its returns and paid the appropriate tax. During the period 2021-22, the petitioner's place of business was inspected by the State Tax Officer, Inspection Cell-IV, Salem on 14.02.2023. During the scrutiny of records, it was found that the petitioner during the relevant period had manufactured



W.P. No.32773 of 2024

57,896.05 metric tonnes of TMT Bars, whereas according to the adjudicating authority what could have been manufactured keeping in view the electricity consumption was only 57,122.90 metric tonnes. The difference of 773.15 metric tonnes was thus proposed to be treated as suppression and a best judgment assessment was made proceeding to treat the same as suppression and levy tax.

3. The Respondents vide letter dated 26.02.2024 explained the reasons for the increase in the production of TMT Bars. On a perusal of the reply, it appears that following aspects were brought to the notice of the assessing authority explaining the reasons for the difference in the production of TMT Bars viz.,

i) The quality of M/s Billets procured was superior to what has been considered by the adjudicating authority.

ii) A new furnace was installed resultantly there is reduction of power consumption.

iii) That they had purchased 8,068.55 metric tonnes billets for producing the TMT Bars during the year.

4. It was found that they had disclosed sales quantity/ supply to the extent of 57,355.19 metric tonnes which was higher than what would have been produced/ manufactured which according to the adjudicating authority i.e.,



57,122.90 metric tonnes. It was submitted that despite the fact that objections

have been filed the impugned order has been passed without dealing with it.

Instead the adjudicating authority has mentioned in one line that the taxpayer's objections are not accepted. It is submitted that the impugned order suffers from the vice of being non-speaking order apart from non-application of mind to the materials on record, namely the reply which is filed by the petitioner.

5. The learned counsel for the Respondents on the other hand would submit that this is an appealable order and that this Court ought not entertain the writ petition as the petitioner has an alternate remedy by way of an appeal.

6. This Court is conscious of the fact that writ petitions under Article 226 of the Constitution of India would not be entertained normally if statutory remedy is not availed. However, existence of alternate remedy is not an embargo or an absolute bar to exercise power under Article 226 of the Constitution of India but a self-imposed restriction and the following circumstances viz., violation of principles of natural justice or lack of jurisdiction or error apparent on the face of the record are some of the exceptions carved out to the rule of alternate remedy for exercise of discretion under Article 226 of the Constitution of India.



W.P. No.32773 of 2024

WEB COPY

7. On hearing both sides, I find that there is merit in the submissions of the learned counsel for the petitioner that the impugned order does not deal with the objections more particularly the three aspects which explained the reasons for increase in the production of the TMT Bars. It is trite law that any order which results in adverse civil consequences ought to assign the reasons. Failure to assign reasons would vitiate the proceedings.

8. In view thereof, the impugned order is set aside. Liberty is granted to the Respondent to proceed in accordance with law after affording the petitioner a reasonable opportunity of hearing. The writ petition stands disposed of with the above direction. No costs. Consequently the connected miscellaneous petitions are closed.

19.11.2024

Speaking (or) Non Speaking Order

Index : Yes/ No

Neutral Citation: Yes/No

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MOHAMMED SHAFFIQ, J.



W.P. No.32773 of 2024

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To:

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