IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WP No.34281 of 2024

M/s. Sugos Steel Traders,
Represented by its Partner V.Govindkumar,
No.293/6B Mugulur Village, Mathigiri,
Sanamavoo Post,
Hosur-635110. ... Petitioner

versus

1.The State Tax Officer, Inspection-4,
Office of the Joint Commissioner (ST)(Int),
No.3/47 Sapathagiri Complex,
Hosur Division,
Hosur.

2.The Assistant Commissioner (ST)(FAC),
Hosur (South)-3 Assessment circle,
Hosur 635109. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari, calling for the connected records of the impugned proceedings of the respondents 1 and 2 made in GSTIN:33ABUFS3962LIZF/2021-22 dated 16.05.2024 and 06.06.2024 respectively and quash the same.

For the Petitioner :Mr.Manoharan S Sundaram

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

ORDER

This Writ Petition is filed challenging the proceedings of respondents 1 and 2 in GSTIN:33ABUFS3962LIZF/2021-22, dated 16.05.2024 and 06.06.2024 relating to the assessment year 2021-2022.

2. The petitioner is a dealer in iron and steel. The petitioner is a registered dealer under the Goods and Services Act, 2017. During the relevant period, the petitioner had filed its return and paid appropriate taxes. While scrutinizing the petitioner's monthly return, it was found that there were certain discrepancies between GSTR-3B and GSTR-2A. Thereafter, two orders were passed in respect of the very same supplies to the petitioner. One order, in GST DRC-07 dated 16.05.2024, was passed by the first respondent and DRC-01A, dated 29.10.2022, by the second respondent followed by a show cause notice dated 09.01.2023

and reminders on 19.02.2024 and 01.04.2024. The petitioner was also given opportunities of personal hearing on several occasions. However, the petitioner had neither filed a reply nor availed of the opportunities of hearing given to him. Hence, the impugned orders came to be passed, confirming the proposal.

3. At the outset, it is submitted by the learned counsel for the petitioner as well as the learned Government advocate for the respondents that there have been two orders passed in respect of the very same supplies.

4. In view thereof, it is submitted by the learned Government Advocate for the respondents that the order dated 16.05.2024 may be set aside.

5. Recording the above submissions made by the learned Government Advocate for the respondents, the order dated 16.05.2024 is set aside.

6. Now let us examine the order dated 06.06.2024. On scrutiny of the monthly returns filed by the dealer, for the assessment year 2021-2022,

discrepancy was noticed between GSTR-3B and GSTR-2A, in respect of input tax credit. Thus, it was proposed to reverse the difference in input tax credit. Thereafter, a notice in DRC-01A dated 29.10.2022 was issued, followed by a show cause notice in DRC01 dated 09.01.2023, and reminders on 19.02.2024 and 01.04.2024. The petitioner was also given opportunity of personal hearing on 08.04.2024. However, the petitioner had neither filed a reply nor availed of the opportunity of hearing given to him.

7. The impugned order is challenged on the premise that neither the show cause notices nor the impugned order of assessment have been served by tendering to the petitioner or by registered post, instead it was uploaded in the common portal. It was further submitted that the petitioner was unable to access the common portal and thus was unable to participate in the adjudication proceedings.

8. The limited issue that arises for consideration in the impugned order is the alleged mismatch between GSTR-3B and GSTR-2A. It is

submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, they would be able to explain the alleged discrepancies between GSTR-3B and GSTR-2A.

9. The learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of ***M/s.K.Balakrishnan, Balu Cables vs. O/o. the Assistant Commissioner of GST & Central Excise in W.P.(MD)No.11924 of 2024 dated 10.06.2024***. It was further submitted that the petitioner is ready and willing to pay 25% of the disputed tax and that he may be granted one final opportunity before the adjudicating authority to put forth their objections to the proposal.

10. In view thereof, the impugned order in DRC-01A, dated 29.10.2022 is set aside. The petitioner shall deposit 25% of the disputed tax within a period of four (4) weeks from the date of receipt of a copy of this order.

11. On complying with the above condition, the impugned order of

assessment shall be treated as a show-cause notice and the petitioner shall submit its objections along with supporting documents/material, within a period of four (4) weeks from the date of receipt of a copy of this order.

12. If any such objections are filed, the same shall be considered by the respondents and orders passed in accordance with law, after affording a reasonable opportunity of hearing to the petitioner. If the above deposit is not paid or objections are not filed within the stipulated period, i.e., four weeks and four weeks respectively, from the date of receipt of a copy of this order, the impugned order of assessment dated 06.06.2024 shall stand restored.

13. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, WMP Nos.37142 and 37145 of 2024 are closed.

25.11.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
mrn

To
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Hosur Division,
Hosur.

2.The Assistant Commissioner (ST)(FAC),
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MOHAMMED SHAFFIQ, J.

(mrn)

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