IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.36661 of 2024
and
WMP Nos.39559 and 39560 of 2024

Tvl.Pandian Stores Super market,
rep. By its Partner, R.Abaranjithan : Petitioner

versus

The Deputy State Tax Officer 2
Perambur Assessment circle : Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking for a Writ of Certiorari calling for the records of the respondent order dated 30.08.2024 m GSTIN 33AASFP0460DlZG/2019-20 quash the same

For Petitioner : Mr.Adithya Reddy

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

ORDER

The present writ petition is filed challenging the impugned order dated 30.08.2024 on the premise that the same is not a speaking order and thus in violation of principles of natural justice.

2. The petitioner is a partnership firm and engaged in the business of running a supermarket. The petitioner is registered under the TNGST/CGST Act, 2017. During the relevant period, the petitioner had filed its return and paid the appropriate taxes. However, on examination of the information furnished in the return under various heads and also the information furnished in GSTR 1, GSTR 2A, GSTR 3B, E way Bills and other records, the following discrepancies were noticed:

a) Under declaration of output tax

b) Under declaration of Ineligible Input Tax Credit

c) Input Tax credit not reversed in respect of non business transaction and exempted supplies.

d) Input Tax Credit claimed in respect of supplies effected by cancelled dealers, return defaulters and tax non payer.

2.1. Pursuant thereto, a show cause notice in DRC 01 was issued to the petitioner on 23.05.2024. Further personal hearing was offered on 14.06.2024 and 03.07.2024. In response to the same, the petitioner filed its reply along with supporting documents on the following dates: 30.07.2024, 21.08.2024, 24.08.2024 and 29.08.2024 inter alia highlighting the following in respect of all the four defects :

a) In respect of first issue, it was submitted that taxes have already been paid and they would be sharing the proof of having discharged the tax liability;

b) In respect of second issue, after placing reliance upon Section 17(5) of the GST Act, it was submitted that they were engaged in the business of trading of goods and electrical goods were purchased for its trading activity. Thus invocation of Section 17(5) of the Act is unwarranted.

c) In respect of third issue, it was submitted that there was no common input tax credit and thus reversal is not warranted in terms of Section 17(1)(2) of the GST Act.

d) In respect of fourth issue, it was submitted that the taxes have already been paid along with the material value and reliance was placed on the following judgments, viz.,

i) Mukand Limited vs the State of Karnataka, Bangalore reported in 2018-VIL-82-KAR

ii) M/s.LGW Industries Limited vs UOI 2021 (12) TMI 834- Calcutta High Court *iii) M/s.Tarapore & Company, Jamshedpur vs The State of Jharkhand in W.P.(T) No.773 of 2018 passed by Jharkhand High Court.*

iv) On Quest Merchandising India Pvt. Ltd, vs Government on NCT of Delhi, reported in 2017 (10) TMI 1020-Delhi High Court.

to submit that denial of input tax credit invoking Section 162(2)(c) is not warranted.

3. The entire objections have been extracted in the order running to about four pages. However, after extracting the reply, the same is rejected by merely stating the following:

"The reply and supportive documents filed by the taxpayer have been examined carefully. The reply filed by the tax payer is not acceptable and hence the demand proposed in the notice is hereby conformed"

4. The learned Government Advocate for the respondents would however submit that there is an effective alternative remedy and thus this Court should not entertain the present writ petition.

5. Heard both sides and perused the material available on record.

6. This Court is conscious of the fact that normally jurisdiction under Article 226 would not be entertained when there is an alternate remedy, however the same is not an absolute bar but is a self imposed restriction and has exceptions carved out to the above rule, one such exception is where the order is made in violation of principles of natural justice. Natural justice has several facts and assigning of reason is one fact of natural justice. Failure to assign reason would initiate the order on the ground of violation of principles of natural justice.

7. It is trite law that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision and reveals the rational nexus between the facts considered and conclusions reached. Reasons being harbinger between the mind of the maker of the order to the controversy in question and the decision or conclusion arrived at, it excludes the chances to reach arbitrary, whimsical or capricious decision or conclusion. Reasons assure an inbuilt support to the conclusion and decision reached.

8. The requirement of giving reasons is based on sound principles. The

requirement is intended to achieve the following objects and laudable purposes:

(i) In the first instance, the requirement to give reasons ensures application of mind to the material, for, how does one give reasons for an order unless one applies one's mind to the material which it is called upon to consider.

(ii) Secondly, it incorporates a built-in safeguard against arbitrariness in the exercise of power. The requirement makes the authority pause for a moment and articulate for itself why it was making the order. It feels that it is answerable for its order and the validity of the order would be tested at the touch-stone of reasoning, rationality and logic.

(iii) Thirdly, it makes any further examination or review in appeal or other proceedings before courts more meaningful and effective. It enables all subsequent authorities dealing with the matter to know how the mind of the authority, which made the order, was functioning; what is it that appealed to it when it made the order and how it dealt with the objections as to why the order should or should not be made.

9. It may be relevant that the Hon'ble Supreme Court in the case of Oryx Fisheries (P) Ltd. v. Union of India reported in (2010) 13 SCC 427, after referring to the case of Kranti Associates (P) Ltd. Masood Ahmed Khan reported in (2010) 9 SCC (Civ) 852, formulated the following principles on the relevance

of reason:

*"**39.** On the requirement of disclosing reasons by a quasi-judicial authority in support of its order, this Court has recently delivered a judgment in Kranti Associates (P) Ltd. v. Masood Ahmed Khan.*

***40.** In Kranti Associates this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below :*

"(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires, 'adequate and intelligent reasons must be given for judicial decisions'.

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of 'due process".

10. Applying the above judgment of the Hon'ble Supreme Court to the impugned proceedings, this Court is of the view that the impugned proceedings suffers from the vice of being a non-speaking order. At this juncture the learned counsel for the respondent would submit that they may be granted liberty to reconsider the issue afresh. The impugned order is set aside. It is open to the respondent to proceed and complete the assessment in accordance with law, after

affording the petitioner a reasonable opportunity of hearing.

11. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

17.12.2024

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

To
The Deputy State Tax Officer 2
Perambur Assessment circle

MOHAMMED SHAFFIQ, J.

mrn

W.P. No.36661 of 2024

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