IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.37666 of 2024
and
WMP Nos.40726 and 40727 of 2024

M/s.Rahman Steel Traders,
rep. By its Partner,
P.N.Neiman Faraz : Petitioner

versus

The Assistant Commissioner (ST)
Broadway Assessment circle,
32, Integrated Commercial taxes Office Complex,
Room No.304, 3rd Floor, Elephant Gate Bridge Road,
Vepery, Chennai 600 003 : 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 in his proceedings in GSTIN 33AAAFR5137P1ZZ/ 2019-20, quash the order dated 31.08.2024 passed therein.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader

ORDER

The present writ petition is filed challenging the impugned order dated 31.08.2024 on the premise that the impugned order is made on grounds different from that which are set out in the show cause notice, thereby resulting in violation of principles of natural justice.

2. The petitioner is engaged in the business of supply of iron and steel and is registered under the GST Act. During the relevant period, the petitioner had filed its return and paid appropriate taxes. While so, on examination of the information furnished in the returns under various heads, and also the information furnished in GSTR 01, GSTR 2A, GSTR 3B, E way bills and other records, it was noticed that the petitioner's had availed input tax credit in respect of supplies, which were ineligible in respect of the following items: Motor vehicles, Iron & steel and Hardware.

2.2. Pursuant thereto, a show cause notice was issued to the petitioner on 23.05.2024. In response to the same, the petitioner had filed its reply on 26.07.2024. Further, personal hearing was offered on 26.07.2024, 09.08.2024 and 13.08.2024.

3. Learned counsel for the petitioner would submit that in respect of motor

vehicle and hardware, pursuant to the show cause notice, input tax credit has been reversed. However, in respect of iron and steel, it is submitted that petitioner had filed its reply stating that they are engaged in supply of iron and steel and therefore, embargo/restriction contained in Section 17(5) of the Act may not be applicable to the petitioner. After recording the petitioner's objection, the impugned order however proceeds to confirm the proposal, denying the petitioner's input tax credit on the premise that the petitioner had only provided copy of tax invoices and E way bills, which did not establish physical movement of goods or authenticity of the genuineness of the transportation. The proposal to deny input tax credit was thus confirmed.

4. Learned counsel for the petitioner submits that it is trite law that show cause notice forms the foundation and therefore any order, which traverses beyond the show cause notice or made on grounds, which are different and new, would be in violation of principles of natural justice and cannot be sustained.

5. On this being pointed out, learned Additional Government Pleader for the respondent would submit that the petitioner's may treat the impugned order as a show cause notice and submit its objection, within a period of four weeks, from the date of receipt of a copy of this order. On receipt of the objections, the

respondent authority would pass orders, after affording the petitioner a reasonable opportunity of hearing.

6. In view thereof, the impugned order dated 31.08.2024 is set aside. The petitioner may treat the impugned order as a show cause notice and shall submit it objections, within a period of four weeks from the date of receipt of a copy of this order. On receipt of the objections, the respondent authority shall pass orders, after affording the petitioner a reasonable opportunity of hearing and also ensure that the order is one, which contains the reasons/speaking order.

7. There will 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 Assistant Commissioner (ST)
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MOHAMMED SHAFFIQ, J.

mrn

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