IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WP No.38527 of 2024
and
W.M.P.No.41737 and 41738 of 2024

Tvl.Sri Renga Steels,
Represented by its partner,
Mr.G.Sridhar,
No.246/1 & 247/1, Vichoor Village Road,
Vichoor, Chenai 600 103. ... Petitioner

V.

The Assistant Commissioner (ST),
Cholavaram Assessment Circle,
Thiruvallur Division,
No.32, 1st Floor, Room No.109,
The Integraed Commercial Taxes Building,
Elephant Gate Bridge Road (Wall Tax Road),
Vepery, Chennai 600 003. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari, to call for the impugned proceedings of the respondent in GSTIN:33AAXFS8627C1ZT/2019-2020 dated 24.08.2024 and the connected order under Section 73 and the summary of the order in Forrm GST DRC-07 dated 24.08.2024 issued in Reference

No.ZD330824218415H and quash the same as passed without granting a personal hearing and also contrary to the provisions of the Central Goods and Service Tax Act, 2017 read with the provisions of the Tamil Nadu Goods and Services Tax Act, 2017.

For Petitioner :Mr.P.RajKumar

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

ORDER

The present writ petition is filed challenging the impugned order dated 24.08.2024, passed by the respondent on the premise that the same was made in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is a dealer in Iron and Steel and is registered under the GST Act. During the relevant period of 2019-20, the petitioner had filed the returns and paid appropriate taxes. However, on examination of the information furnished in the return the following discrepancies were found:

i) Excess claim of ITC.

ii) ITC claimed from cancelled dealers, return defaulters and tax non payers.

3. It is submitted by the learned counsel for the petitioner that an intimation in Form DRC01 was issued on 18.05.2024 followed by 2 reminders viz., 08.07.2024 and 02.08.2024. It is submitted by the learned counsel for the petitioner that the petitioner submitted its reply dated 22.08.2024, wherein it was submitted that the supplier M/s.Kamakshi Industries from whom the raw materials were purchased has gone into liquidation and though the taxes have been paid by the petitioner to the said M/s.Kamakshi Industries, however, the proposal to reject the petitioner's claim of Input Tax Credit on the premise that the supplier has not paid the taxes so collected cannot result in denial of the benefit of Input Tax Credit to the petitioner. However, the authority had rejected that the above objections and confirmed the above proposal rejecting the claim of Input Tax Credit on finding that the supplier had not filed GSTR 3B returns. It is submitted by the learned counsel for the petitioner that if the petitioner is provided with an opportunity, he would be able to explain the alleged

discrepancies.

4. The learned counsel for the petitioner would place reliance upon the recent judgment of this Court in the case of **Sree Manoj International Vs. Deputy State Tax Officer in W.P.No.10977 of 2024 dated 25.04.2024**, to submit that this court has remanded the matter back in similar circumstances subject to payment of 10% of the disputed taxes.

5. It was further submitted that the petitioner is ready and willing to pay 10% 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, to which the learned Additional Government Pleader appearing for the respondent does not have any serious objection.

6. By consent of both parties, the writ petition stands disposed of on the following terms:

a) The impugned order dated 24.08.2024 is set aside

b) The petitioner shall deposit 10% of the disputed taxes as admitted by the learned counsel for the petitioner and the respondent, within a period of four weeks from the date of receipt of a copy of this order.

c) If any amount has been recovered or paid out of the disputed taxes, including by way of pre-deposit in appeal, the same would be reduced/adjusted from/towards the 10% of disputed taxes directed to be paid. The assessing authority shall then intimate the balance amount out of 10% of disputed taxes to be paid, if any, within a period of one week from the date of receipt of a copy of this order. The petitioner shall deposit such remaining sum within a period of three weeks from such intimation.

d) The entire exercise of verification of payment, if any, intimation of the balance sums, if any, to be paid for compliance with the direction of payment of 10% of the disputed taxes, after deducting the sums already paid and payment by the petitioner of the balance amount, if any, on intimation in compliance of the above direction shall be completed within a period of four weeks from the date of receipt of copy of this order.

e) Failure to comply with the above condition viz., payment of 10% of disputed taxes within the stipulated period i.e., four weeks from the date of receipt of a copy of this order shall result in restoration of the impugned order.

f) If there is any recovery by way of attachment of Bank account or garnishee proceedings, the same shall be lifted /withdrawn on complying with the above condition viz., payment of 10% of the disputed taxes.

g) On complying with the above condition, the impugned order of assessment shall be treated as show cause notice and the petitioner shall submit its objections within a period of four (4) weeks from the date of receipt of a copy of this order along with supporting documents/material. If any such objections are filed, the same shall be considered by the respondent and orders shall be passed in accordance with law after affording a reasonable opportunity of hearing to the petitioner. It is made clear that if the above conditions viz., 10% of disputed taxes is not complied or objections are not filed within the stipulated period, four weeks respectively from the date of receipt of a copy of this order, the impugned order of assessment shall stand restored.

7. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

20.12.2024

Index : Yes/No
Neutral Citation : Yes/No
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To:

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MOHAMMED SHAFFIQ, J.

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