BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)Nos.3183 to 3187 of 2024 and
WMP(MD) Nos.3142, 3144, 3145, 3147, 3170, 3171, 3146, 3150, 3148 and 3149 of 2024

M/s.Madhu Filament,
Represented by its Managing Partner,
No.92, Karur Athur Industrial Estate,
SIDCO, Vennaimalai Post,
Karur – 639 006 ... Petitioner all WPs

Vs

The Assistant Commissioner (ST) (FAC),
Karur 2 Assessment Circle,
Karur Zone,
Erode Division,
Commercial Tax Building,
North Pradhakshanam Road,
Karur – 639 001. ... Respondent in all WPs

COMMON PRAYER:- Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in Order bearing No.GSTIN: 33AAAFM9010A1Z3/2017-18, 33AAAFM9010A1Z3/2018-19, 33AAAFM9010A1Z3/2019-20, 33AAAFM9010A1Z3/2020-21, 33AAAFM9010A1Z3/2021-22 dated 03.11.2023 passed by the respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.A.Baskaran
Additional Government Pleader
(In all WPs)

COMMON ORDER

These writ petitions have been filed challenging the assessment orders passed by the Assistant Commissioner, Karur as against the petitioner Company for the assessment years from 2017-2018 to 2021 to 2022.

2.Since in all these writ petitions, the petitioner is one and the same and the issue is pertaining to the assessment orders of different years, all these writ petitions are disposed of by this common order.

3.The case of the petitioner is that the petitioner is a manufacturer of knitted fabrics doing business in the name of "M/s.Madhu Filament", SIDCO, Vennaimalai Post, Karur. The knitted fabrics falls under Chapter Heading 6001, which attracts 5% GST. However, the impugned assessment orders have been passed that the petitioner company, which has been registered for supply of knitted fabrics under the Chapter head of 6001 has also marketed and sold certain finished products such as Sack, Bags, Fishing Net, Baby Mosquito Net, Food Bags, Vegetable Bags etc., which fall under the Tariff Head 3926 and attracts 18% GST.

4.The learned counsel appearing for the petitioner submits that the petitioner Company is a registered manufacturer of knitted fabrics alone and they have not supplied any materials as claimed by the respondent. However, based on some complaints, the respondent has conducted a surprise inspection in the petitioner's

Factory on 22.06.2022 and they have not found any finished goods as claimed by them. However, a notice in Form GST DRC-01A was issued on 25.01.2023, for which, the petitioner has submitted his replies on 08.02.2023 and 06.09.2023. Thereafter, the respondent has issued another notice in Form DRC 01 on 29.09.2023 that this petitioner has marketed and sold certain finished goods through Indiamart.com. On 10.10.2023, the petitioner has also submitted another reply to the notice in Form DRC-01, dated 29.09.2023. Without considering the reply of the petitioner, dated 10.10.2023, the impugned orders have been passed on 03.11.2023 confirming the demand. According to the learned counsel for the petitioner, without providing an opportunity of hearing under Section 75(4) of GST Act, 2017 the impugned orders came to be passed.

5.The learned counsel for the petitioner has relied on the order passed by this Court in W.P Nos.4105, 4110 and 4108 of 2023, dated 13.02.2023 and submits that this Court has already held that if the authorities are intended to take any adverse decision as against the assessee, then, an opportunity of personal hearing must be provided to him. Here, in the present case on hand, the respondent has not considered the reply of this petitioner, dated 10.10.2023 and no opportunity of personal hearing was provided to the petitioner after the notice in Form DRC-01, dated 29.09.2023.

6.Mr.A.Baskaran, learned Additional Government Pleader assisted by the Assistant Commissioner, who is present before this Court submits that the assessment orders have been passed pursuant to the materials, which were available in the webpage of Indiamart.com, wherein, this petitioner has marketed some finished goods such as Sack and Bags, Fishing Net, Baby Mosquito Net, Food Bags, Vegetable bags etc., based on which, a surprise inspection was conducted in the petitioner's premises on 22.06.2022. Notice was issued in Form GST DRC-01A on 25.01.2023 and another notice in DRC 01 was issued on 29.09.2023.

The petitioner has also participated in the enquiry and submitted his replies on 08.02.2023 and 06.09.2023. Further, an opportunity of personal hearing was provided to the petitioner on 06.09.2023. Therefore, according to the learned Additional Government Pleader, all opportunities were provided and hence there is no violation of principles of natural justice.

7.This Court considered the rival submissions made and also perused the materials placed on record.

8.The petitioner is a manufacturer of knitted fabrics, which falls under the Chapter Head 6001 and it attracts 5% GST. In the webpage of Indiamart.com, the petitioner Company has marketed and sold certain finished products such as bags, fishing net, baby mosquito net, food bags, vegetable bags etc., which fall under the Tariff Head 3926 and attracts 18% GST. Therefore, based on the materials available in the webpage of Indiamart, a surprise inspection was conducted in the petitioner's premises on 22.06.2022 and a notice in Form GST DRC-01A was issued on 25.01.2023, for which, the petitioner has replied on 08.02.2023 and 06.09.2023. Thereafter, a notice in Form GST DRC-01 was issued on 29.09.2023. The petitioner has submitted his reply on 10.10.2023 for the notice, dated 29.09.2023. The grievance of the petitioner is that he has not been provided with an opportunity of personal hearing after his reply, dated 10.10.2023. It is stated that as per Section 75(4) of GST Act,2017, an opportunity of hearing shall be granted, where a request is received in writing from a person chargeable with tax. The relevant provision is extracted as under:-

> "75(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person."

9.A perusal of the petitioner's reply, dated 10.10.2023 disclosed that the petitioner has not made a request for personal hearing in his reply. However, this Court by relying upon the provision under Section 75(4) of the GST Act, 2017 in WP Nos. 4105, 4110 and 4108 of 2023, dated 13.02.2023 has held that the respondents ought to have provided an opportunity of personal hearing, if they contemplated an adverse decision as against the assessee. The relevant paragraphs are extracted as under:-

> *"6.In fact in a decision rendered by a learned Single Judge of this Court on 31.08.2020 in W.P(MD) Nos. 8133 of 2020, etc., batch, while interpreting Section 75(4) of the TNGST Act, 2017, it has been observed that only after a reply is sent by the assessee, the Authority can apply its mind and if they contemplate an adverse decision they must provide an opportunity of hearing. Learned Single Judge has also observed that issuing a personal hearing notice even prior to the receipt of the explanation from the petitioner cannot be said to be in compliance of Section 75(4) of the TNGST Act, 2017.*

7.For the foregoing reasons, this Court is of the considered view that the principles of natural justice has been violated by the respondent before passing of the impugned assessment order for the following reasons:-

a) No reasons have been given by the respondent for rejecting the petitioner's objections raised in the replies all dated 19.10.2022;

b) Personal hearing was afforded to the petitioner even before the replies were received by the respondent;

c) They are non-speaking orders.

8.Only after receipt of the reply and only in cases where the respondent contemplates an adverse decision against the petitioner, a personal hearing will have to be granted and not before a reply is received from the petitioner, that too when the reply has been duly acknowledged in that impugned orders.

9.In the result, the impugned assessment orders all dated 25.10.2022 are hereby quashed and the matters are remanded back to the respondent for fresh consideration on merits and in accordance with law.

The respondent shall pass final orders within a period of twelve weeks from the date of receipt of a copy of this order, after adhering to the principles of natural justice and after affording a personal hearing to the petitioner."

10.In some of the impugned orders, there is no reference about the reply of this petitioner, dated 10.10.2023, which he has submitted on the notice in Form DRC-01. Admittedly, notice in Form DRC-01 was issued after conducting an inspection based on the advertisement made by the petitioner in the Indiamart.com. The respondent has not identified any finished goods in the petitioner's premises as claimed by them. However, they have proceeded with further even without providing an opportunity of hearing. This Court is *prima facie* satisfied with the grounds raised by this petitioner.

11.Considering the fact that the officer, who is present before this Court has confirmed that the personal hearing has not been provided to the petitioner after the notice in Form DRC-01, dated 29.09.2023 and taking into consideration of the fact that the reply of the petitioner Company, dated 10.10.2023 was not considered by the respondent and also in view of the order passed by this Court as stated supra that the respondent ought to have provided an opportunity to the petitioner, in the event of passing any adverse order and also in the absence of any finished goods identified in the petitioner's premises, the orders impugned in these writ petitions are hereby set aside. The issue is remanded back to the respondent for fresh consideration. The petitioner shall appear before the respondent for personal hearing on 26.02.2024, without expecting any separate notice from the respondent. The respondent shall take a decision after providing an opportunity of personal hearing to the petitioner and considering the reply of the petitioner, dated 10.10.2023 along with the inspection report within a period of four weeks from thereon.

12.Accordingly, these writ petitions are allowed. No costs. Consequently, connected Miscellaneous petitions are closed.

13.02.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes
vrn

To

The Assistant Commissioner (ST) (FAC),
Karur 2 Assessment Circle,
Karur Zone,
Erode Division,
Commercial Tax Building,
North Pradhakshanam Road,
Karur – 639 001.

B.PUGALENDHI, J.

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Common Order made in
W.P(MD)Nos.3183 to 3187 of 2024 and
WMP(MD) Nos.3142, 3144, 3145, 3147, 3170, 3171, 3146, 3150, 3148 and 3149 of 2024

13.02.2024