BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.17092 of 2024
and
W.M.P.(MD).Nos.14700 and 14703 of 2024

Tvl.Anna Steel,
Represented by its Proprietor Gamana Ram,
No.23, Moomin Pettai,
ObulaPadithurai,
Munichalai Road,
Madurai – 625 001. ... Petitioner

Vs.

1.The Deputy State Tax Officer-II,
Munichalai Road Assessment Circle,
Dr.Thangaraj Salai,
Commercial Taxes Building,
Ground Floor, Madurai – 625 020.

2.The State Tax Officer,
Munichalai Road Assessment Circle,
Dr.Thangaraj Salai,
Commercial Taxes Building,
Ground Floor, Madurai – 625 020. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the impugned proceedings of the first respondent in Ref.No.33BMTPG4170P1ZH /2021-2022 dated 21.02.2024, the order under Section 74 dated 25.02.2024, the summary of the order in Form GST DRC-07 dated 25.02.2024 both issued in Reference

No.ZD330224152243X and the connected impugned proceedings in Reference No: ZD3306241259187 dated 14.06.2024 and quash both the impugned proceedings as passed contrary to the provisions of the CGST and TNGST Act, 2017 and also against the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.J.K.Jayaselan
Government Advocate

ORDER

The present Writ Petition is filed challenging the impugned order dated 21.02.2024 for the period 2021-2022, on the premise that the impugned order is a non speaking order and also traverses beyond the show cause notice, thereby vitiating the entire proceedings. Challenge is also laid to subsequent order dated 14.06.2024, whereby rectification petition filed by the petitioner was rejected without considering the application on its own merits.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in trading of stainless steel articles, iron and steel scraps and is registered under GST Act. The petitioner has filed its returns periodically and also paid appropriate taxes. While so, there was an inspection by the Enforcement Wing Officers on 02.03.2022. During the course of such inspection, certain defects were noticed. Based on the proposal forwarded by

the State Tax Officer (Intelligence), Adjudication-II, Madurai, the second respondent issued Notice in DRC 01 A dated 14.09.2022 to the petitioner, wherein following defects were noticed:

a) Difference between GSTR 2A and GSTR 3B.

b) Sufferance of tax not furnished for certain items.

c) Sundry Creditors on the premise that the petitioner has made the payment after 180 days and thus ineligible to avail Input Tax Credit in terms of Section 16(2)(d) of the TNGST Act, 2017.

3. Importantly, under the head General, DRC-01A proceeded to state that the respondent authorities had noticed that the petitioner had effected purchases and sales with JJ Sales, Madurai and GJ Metal, Madurai, whose business was suspected as suspicious and that, the petitioner furnished purchase invoices, sales bills, bank payment details claiming purchases and sales as having been made with the said entities. It is submitted by the learned counsel for the petitioner that the tax in respect of the entire value of supplies indicated in the above notice had already been paid.

4. The petitioner submitted objections vide reply dated 10.10.2022 for the year 2021-2022, in respect of all defects including defects which are set out under the head General as evident from the following extracts:

"*(5) General*

In this observation, the State Tax Officer himself accepted that we have produced all the invoices of purchase and sales and bank payment details.

In the intimation in form DRC-01A, the learned State Tax Officer has made a proposal of tax on our out ward supply to the recipients Tvl. JJ Steel, Madurai and Tvl.SP. Metal, Madurai on sole ground that they are not covered by Lorry receipts/Trip Sheets. The inward supply to us from Tvl. SP. Metal, GJ Metal and JK. Metal has also been proposed to tax on the same ground. Further we have been requested to produce the ledger accounts in respect of the suppliers Tvl. Monica Alloys Pvt. Ltd and Tvl. Prakash Enterprises. In this observation, the State Tax Officer himself accepted that we have produced all the invoices of purchase and sales and bank payment details. ***In such as situation, proposing tax on the entire turnover is without any evidences and highly irregular.***

With reference to the proposals, regarding our outward supply, we state that the supply to the said dealers are only local transactions for which they will arrange transport to carry the goods to their place. It is only on f.o.b. delivery to us. Hence there is no need of maintaining any lorry receipts by us. For the transport/freight cost, only the recipient of goods will pay tax under RCM as per section 9(3) of the Act if it is not a composite supply. We like to bring the kind attention of the learned State Tax Officer that the place of business of Tvl.JJ Steel was also inspected and the tax on the freight charges were collected from them under RCM and the department is at liberty to proceed against the same in respect of the dealer Tvl S.P. Metal. ***Hence proposing tax on our outward supply***

to these dealers are against law and could not be sustained to any stretch of imagination.

*We request the kind attention of the learned State Tax Officer to the figures adopted in respect of our outward supply to Tvl. JJ. Steel, Madurai. The figure adopted in the form in DRC- 01A on our outward to Tvl. JJ. Steel is **Rs. 216,12,42,272**, whereas our total outward supply turnover during the year 2021-22 is **Rs. 9,85,02,857 only**.*

Regarding the inward supply to us, we received the goods from TvI. SP. Metal, GJ.Metal and JK. Metal to the value which included the value of freight as a composite supply. Hence proposing tax on our inward supplies from these dealers are against law and cannot be sustained. It is thus required to be noted that genuine transaction for purchase of goods were undertaken by our firm from selling vendors who are also genuine dealers under GST Act doing business even now. The proposal of tax relating to our inward supply is without confronting us with the information based upon which the department is relying. Since now we are not in a position to segregate the freight service element in the inward composite supply, we are now prepared to pay the taxes under RCM for the freight charges calculated at 5% of the inward supply turnover as mentioned in the DRC-01A in respect of the above stated dealers Tvl. SP. Metal, GJ. Metal and JK. Metal and accordingly the tax to be paid under RCM on freight services and interest to be paid are worked out as under:

Inward Supply turnover for 2020-21 as mentioned in DRC-01A... Rs.32777644
Value of freight charges calculated at 5% on Rs.3468007=Rs.1638882

Tax under RCM=1638882 at 5% =Rs.81944
Tax Due: CGST: Rs. 40972; SGST: Rs. 40972

Interest Due: CGST: Rs.4302; SGST: Rs. 4302

We have enclosed copies of the relevant payment challan and further we state that we are entitled to the credit of the above paid tax in our Electronic credit Ledger.

We request the kind attention of the learned State Tax Officer to the figures adopted in respect of our outward supply to Tvl. JJ. Steel, Madurai. The figure adopted in the form in DRC 01A is ***Rs. 216,12,42,272****, whereas our total outward supply turnover during the year 2021-22 is* ***Rs. 9,85,02,857 only.***

Since we have not made any transactions with the suppliers Tvl. Monica Alloys India Pvt. Ltd and Tvl. Prakash Enterprises during the year 2021-22, filing of ledger accounts in respect of these two dealers does not arise.

Stock Discrepancy*.*

For the stock discrepancy noticed during the course of inspection, we accepted this and paid the taxes of Rs.122567 under CGST and Rs.122567 under SGST and ***the copy of the form DRC-03 has been enclosed.***

In fine, out of the tax so ascertained in the DRC-01A, we have accepted the tax amount of Rs.522 (CGST) and Rs.522 (SGST) and the same has been paid and adjusted by way of DRC-03. Further on our own ascertainment of tax, we have paid tax of Rs.81944 under RCM along with interest.

For the remaining tax ascertainment, we have clearly explained above with facts and figures that we are not liable to such tax.

Hence we request the learned State Tax Officer to drop any further proceedings on the DRC-01A issued for the year 2021-22 and thus, render justice.

5. DRC-01 was thereafter issued on 20.09.2023, wherein after setting out the original proposal and making a brief reference to the petitioner's reply dated 10.10.2022 had indicated that show cause notice would be issued and the tax payer is liable to pay tax and interest in respect of the following items. Relevant portion is extracted hereunder:

SL.NO.	***DETAILS***	***YEAR***	***TAX DUE***	***ITC REVERSAL DUE***	***PENALTY***
1.	*Difference between GSTR-2A and GSTR-3B*	*2021-22*	*-*		*163.8*
2.	*Sufferance of tax not furnished*	*2021-22*	*26232*		*Appropriate penalty under CGST and SGST Act has to be levied.*
3.	*Inwards from Registration cancelled*	*2021-22*	*217469*		
4.	*Stock Disctepancy*	*2021-22*	*245134*		
			488835		

6. The above extract would show that DRC-01 confined itself to the first three defects leaving out the defect under the head General. The petitioner submitted its reply dated 29.09.2023 reiterating its objections, while not submitting in respect of the discrepancies originally noticed under the head General, while issuing DRC-01 under the belief that the same has been dropped.

7. However, while passing the impugned order of assessment dated 21.02.2024, it is submitted that taxes are levied under the head General on alleged outward and inward supplies. That apart, although the petitioner had submitted its reply to DRC-01A as well as the show cause notice, the same has been rejected in one line stating that the petitioner has not submitted any concrete evidence. It was further submitted that the assessing officer appears to have merely carried out the proposals of the Enforcement Wing Officer without independently applying his mind. Relevant portion of the order is extracted hereunder:

<u>Proper officer Remarks:</u>

Tax payer not submitted concrete evidence for outward and inward supply. Hence notice confirm and order issues as below.

....

<u>Abstract:</u>

Details	*Turn over*	*Tax due Rs.*			*Interest Due Rs.*			*Penalty Due Rs.*		
		SGST	*CGST*	*IGST*	*CGST*	*SGST*	*IGST*	*CGST*	*SGST*	*IGST*
Rent paid	*12100*	*10890*	*10890*		*3,609*	*3,609*		*10890*	*10890*	
Inwards from Registration Cancelled	*1208160*			*2174688*			*1,11,243*			*217468.8*

HSN CODE (DISCREPANCY IN INWARD AND OUTWARD SUPPLY)	*34,60,700*	*3,11,463*	*3,11,463*		*1,03,064*	*1,03,064*		*3,11,463*	*3,11,463*	
Outward Supply	*217694557*	*1,95,92,510*	*1,95,92,510*		*64,83,2424*	*64,83,242*		*1,95,92,510*	*1,95,92,510*	
Inward Supply	*3,27,77,844*	*29,50,006*	*29,50,006*		*9,76,169*	*9,76,169*		*29,50,006*	*29,50,006*	
Total		*22864869*	*22864869*	*217468.80*	*74,63,02*	*74,63,02*	*111243*	*22864869*	*22864869*	*217468.8*

8. From a reading of the above impugned order of assessment, this Court is of the view that the impugned order of adjudication suffers from the vice of being non speaking order, that apart it also suffers from traversing beyond the show cause notice which is impermissible as held in the following judgments:

(i) ***M/s.Saci Allied Products Limited, U.P vs Commissioner of Central Excise, Meerut on 26.04.2005*** reported in ***2005 (7) SCC 159:***

> *"...*
>
> *The impugned order of the Tribunal which had gone beyond the show cause notice and the order of the respondent- Collector is, therefore, liable to be set aside."*

(ii) Commissioner of Customs, Mumbai vs M/s.Toyo Engineering India Limited Appeal (civil) 2532 of 2001 dated 31.08.2006 reported in **2006 (7) SCC 592**.

> *".....These grounds did not find mention in the show cause*

> *notice as well. The Department cannot be travel beyond the show cause notice. Even in the grounds of appeals there points have not been taken......"*

9. At this juncture, the learned Government Advocate would submit that the respondents would redo the assessment, after affording a reasonable opportunity of hearing to the petitioner and would also submit that the petitioner would have to co-operate in the assessment proceedings, which was agreed to by the learned counsel for the petitioner.

10. In view thereof, the impugned orders are set aside. 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. If the objections are not filed within the stipulated period of four weeks from the date of receipt of a copy of this order respectively, the impugned order of assessment shall stand revived. It is made clear that the assessing authority shall apply his mind independently and proceed to decide the matter in accordance with law.

11. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

26.09.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To:

1.The Deputy State Tax Officer-II,
Munichalai Road Assessment Circle,
Dr.Thangaraj Salai,
Commercial Taxes Building,
Ground Floor, Madurai – 625 020.

2.The State Tax Officer,
Munichalai Road Assessment Circle,
Dr.Thangaraj Salai,
Commercial Taxes Building,
Ground Floor, Madurai – 625 020.

MOHAMMED SHAFFIQ, J.

Nsr

W.P.(MD)No.17092 of 2024

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