

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SHEEL NAGU

&

HON'BLE SHRI JUSTICE MANINDER S. BHATTI

ON THE 12th OF MAY, 2022

WRIT PETITION NO.27676 OF 2019

Between:-

M/S DHARA ENTERPRISES

HAVING OFFICE AT MAIN ROAD,

NIWARI TIGELA, NIWARI,

TIKAMGARH (M.P.)

GSTN: 23AJUPR4173L1ZI

**THROUGH ITS PROPRIETOR SH. SONU RAWAT S/O SH. MANI RAM
RAWAT**

**AGED ABOUT 36 YEARS, R/O 171, JUGIYANA, JHANSI, JHANSI KHAS,
JHANSI (U.P.)**

....PETITIONER

(BY SHRI KAPIL DUGGAL, ADVOCATE)

AND

**1. APPELLATE AUTHORITY & JOINT COMMISSIONER,
STATE TAX, SAGAR DIVISION
SAGAR (M.P.)**

**2. ASSISTANT COMMISSIONER, STATE TAX, TIKAMGARH CIRCLE
ROOM NO.76, JOINT COLLECTORATE BUILDING,
TIKAMGARH (M.P.)-472001**

.....RESPONDENTS

(BY SHRI DARSHAN SONI, GOVERNMENT ADVOCATE)

*This petition coming on for admission this day, **Hon'ble Shri Justice***

***Maninder S. Bhatti** passed the following:*

ORDER

The petitioner has filed this petition while praying for following reliefs:-

“(i) This Hon’ble court may kindly be pleased to call for the records of the case below;

(ii) This Hon’ble Court may kindly be pleased to set-aside the impugned order dated 19.08.2019 (Annexure P/4) passed by Respondent No.1.

(iii) This Hon’ble Court may kindly be pleased to set-aside the impugned order dated 28.05.2019 (Annex.P/2) passed by Respondent No.2.

(iv) Any other appropriate writ/order/direction, which this Hon’ble Court may deem fit and proper also kindly, be issued in the interest of justice.”

2. The facts of the case reveal that the petitioner is engaged in the business of Ferrous waste and scrap and is registered under the provisions of the Goods and Services Tax Act, 2017 (hereinafter referred to as the “Act of 2017). The petitioner was served with a notice dated 13.03.2017 under

Section 74(1) of the Act of 2017. The said notice ensued in passing of an order dated 28.05.2019 (Annexure P/2) by which the tax liability was imposed upon the petitioner along with penalty. Thereafter, the petitioner preferred an appeal before the Appellate Authority, which vide order dated 19.08.2019 (Annexure P/4) was dismissed.

3. Thus, the petitioner has sought indulgence of this Court by way of present writ petition.

4. The counsel for petitioner submits that in the present case, there is gross violation of the principle of natural justice inasmuch as, while issuing notice dated 13.03.2019 (Annexure P/1), if the authorities alleged that the petitioner herein had availed Input Tax Credit (hereinafter referred to as “ITC”), then they should have disclosed the transactions on which such benefit was availed of by the present petitioner. The counsel for the petitioner submits that Annexure P/1 is conspicuously silent as regards the description of transaction on which the petitioner alleged to have availed the ITC.

5. Thus, according to the petitioner, very foundation of the impugned order was bad and thereafter, to utter surprise of the petitioner, in a purely mechanical manner the order dated 28.05.2019 (Annexure P/2) was passed and again in this order also there was no mention as regards business transaction which was found to be questionable by the respondents.

6. Thus, the petitioner throughout was kept in dark and learned counsel for petitioner submits that it was only on passing of appellate order that petitioner came to know for the first time that the transactions were in respect of inward supply received from one M/s V.K. Enterprises, Chhatarpur and as such liability under Section 74 (1) was fastened upon the petitioner. Thus, he submits that apparently in the original show cause notice as well as the original order no descriptions were detailed. Thus, the petitioner in absence of the relevant detail could not defend itself and hence has prayed that the impugned order be quashed.

6. *Per contra*, learned counsel for respondents submits that on 11.03.2019, the authorities found that as regards the transaction pertaining to M/s V.K. Enterprises, Chhatarpur, petitioner had availed the benefit of ITC since the petitioner had received inward supply from M/s V.K. Enterprises, Chhatarpur. This it is urged by respondents motivated the Revenue to issue communication/notice to the petitioner and in the said communication dated 11.03.2019, the value of the good as well as the amount of ITC availed by the petitioner were clearly mentioned.

7. The petitioner, in response to the said notice submitted reply, which is contained in Annexure R/2. Thus, the petitioner was well aware about the details of transaction for which, the liability was being fastened upon the

petitioner and thus the counsel for the respondents submits that the present petition deserves to be dismissed.

8. We have heard learned counsel for the parties and perused the record.

9. We find that the petitioner was issued a notice dated 11.03.2019 with reference No.83/2019/41-B/21/TRAW-3/152. This notice finds mention in Annexure P/1, which is a notice under Rule 142(1) of the GST Rules. It is also important to note that the petitioner did not file any reply to Annexure P/1, dated 13.03.2019. If, the contents of paragraph-6 of the petition are taken into consideration, the same would reveal that the petitioner did not file any reply, but has made an attempt to demonstrate that he sought documents from the respondent No.2 to have some clarity on the issue, but those documents were not supplied to the petitioner and hence for want of those documents, the petitioner could not file reply.

10. Therefore, in our considered view, the explanation so put forth by the petitioner has no substance inasmuch as, neither there is any reply nor there is any application filed by the petitioner on the record by which he sought documents as well as detail of the transaction from the respondents. It is also important to note that before passing the order dated 28.05.2019 (Annexure P/2), the petitioner had submitted his reply (Annexure R/2) to the notice dated 11.03.2019 in which, the petitioner itself had disclosed the transaction with regard to M/s V.K. Enterprises, Chhatarpur and along with the reply, the

petitioner had annexed the relevant documents pertaining to transactions i.e. copy of bill, e-Way bill and GSTR.

11. Thus, the moot question which arises for consideration is as to whether the petitioner was aware about the transactions which were taken note of by the respondent to issue a notice under Section 74 of the Act of 2017. Apparently, the petitioner herein was well aware about the transaction for which the notice dated 13.03.2019 was issued to it inasmuch as, the reply of the petitioner contained in Annexure R/2 filed with the return is unequivocal and makes it crystal clear that the petitioner was well aware that the transaction pertaining to M/s V.K. Enterprises, Chhatarpur was under scanner.

12. Therefore, the petitioner's submission in the present writ petition is grossly misconceived, inasmuch as the petitioner was in the knowledge of the fact that petitioner had availed the benefit of ITC. Thus, the transactions with M/s V.K. Enterprises, Chhatarpur were being inquired into by the respondents, but still having submitted the reply of the notice on 08.05.2019 (Annexure R/2), petitioner did not disclose this fact in his memorandum of appeal, which is contained in Annexure P/3 of the writ petition.

13. If the entire, appeal is perused the same would reveal that the petitioner having already submitted its reply dated 08.05.2019 (Annexure

R/2) disclosing the transactions with M/s V.K. Enterprises, Chhatarpur, failed to mention the facts as regards transactions with M/s V.K. Enterprises, Chhatarpur in his memorandum of appeal. Thus, apparently, the petitioner has made futile attempt to lay foundation by raising a ground that in the notice contained in Annexure P/1, he was not informed regarding the transactions, which in the eyes of the respondents were questionable or doubtful.

14. Thus, in our considered opinion, the writ petition filed by the petitioner is grossly misconceived. The grounds raised in the entire petition are ill founded. The petitioner was within the knowledge of the fact that the petitioner's transactions with M/s V.K. Enterprises, Chhatarpur were under scanner and thus, we find that there is no substance in the present writ petition and accordingly the same stands dismissed with cost of Rs.2000/- in favour of MPSLSA within 60 days from today failing which this case be listed as PUD for execution qua cost.

(SHEEL NAGU)
JUDGE

(MANINDER S. BHATTI)
JUDGE

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BURMAN
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