

W.P.Nos.2244, 2248 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED:02.02.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.2244 and 2248 of 2024
and W.M.P.Nos.2444, 2447, 2453, 2454 of 2024

M/s.Metal Trade Incorporation,
Represented by its Proprietor:Sri Sunil Kothari,
No.15, Raghavan Colony,
Vadapalani, Chennai-600 026.

... Petitioner in both WP's

-VS-

Assistant Commissioner (ST)(FAC),
Vadapalani Assessment Circle,
Greams Road, Annexe Building,
Chennai-600 006.

... Respondent in both WP's

Prayer in W.P.No.2244 of 2024: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the order in GSTIN/33ABCPS7044P1Z7/2017-18 dated 09.10.2023 passed by the respondent and quash the same as arbitrary, violative of principles of natural justice and particularly



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contrary to directions issued by this Court in W.P.No.3033 of 2023
and contrary to law.

Prayer in W.P.No.2248 of 2024: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records relating to the order in GSTIN/33ABCPS7044P1Z7/2022-2023 dated 09.10.2023 passed by the respondent and quash the same as arbitrary, violative of principles of natural justice and particularly contrary to directions issued by this Court in W.P.No.3033 of 2023 and contrary to law.

For Petitioner : Mr.K.Jeyachandran
in both WP's

For Respondents : Mr.Prasanth Kiran, GA (T)
in both WP's



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COMMON ORDER

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In both these writ petitions, separate assessment orders dated 09.10.2023 in respect of distinct assessment periods are impugned.

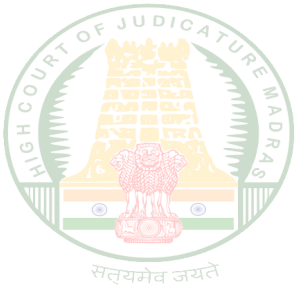
2. The common petitioner is a dealer engaged in trading of iron and steel products. He is a registered person under GST laws. The petitioner had earlier approached this Court challenging the summons issued to him on 18.10.2022 on the ground that he was facing proceedings both at the instance of Central and State GST authorities. The said writ petition was disposed of by order dated 06.02.2023 by directing the petitioner to appear before the 5th respondent therein on 16.02.2023 so as to raise all objections.

3. The present proceedings originated in the issuance of an intimation in Form GST DRC-01A to the petitioner on 03.02.2023. In the said intimation, the petitioner was informed that the Intelligence



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Wing had conducted an inspection under Section 67 of the Tamil Nadu Goods and Services Tax Act, 2017 (the TNGST Act) at the registered place of business of the petitioner and had drawn the conclusion that the petitioner had availed Input Tax Credit (ITC) without actually purchasing goods. The grounds on which such conclusions were drawn were also set out therein. The petitioner replied thereto on 03.04.2023. By the said reply, the petitioner asserted that the intimation was issued entirely on the basis of the report received from the Intelligence Wing. As regards the submission of documents to establish purchase and receipt of the goods, the petitioner stated that the accountant was out of station during the inspection time and that such documents would be produced once the accountant returns. This was followed by show cause notice in Form GST DRC-01 dated 07.03.2023. Eventually, the impugned orders dated 09.10.2023 were issued.



4. Learned counsel for the petitioner invited my attention to the

impugned order and pointed out that the said order first set out the conclusions of the Intelligence Wing. Thereafter, the reply of the petitioner to the intimation was set out in entirety. Learned counsel contends that the findings of the assessing authority are cryptic and confined to about one paragraph of the impugned order. In that paragraph, he submits that the conclusions of the Intelligence Wing were not dealt with by the assessing officer. He also submits that the petitioner was not provided a reasonable opportunity to submit relevant documents or to be personally heard. With reference to the intimation and show cause notice, learned counsel also contends that the said intimation and show cause notice were vague in as much as no details of the supplies or suppliers of the petitioner were set out therein. For all these reasons, he contends that the orders impugned herein call for interference.

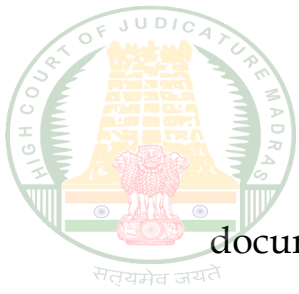


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5. Mr.Prasanth Kiran, learned Government Advocate (Tax),

countered these submissions. He opened his contentions by submitting that the petitioner was provided a reasonable opportunity to meet the allegations in the show cause notice. By making reference to the impugned orders and, in particular, reference 6 thereof, learned counsel submitted that the office reminder notice dated 02.09.2023 was the notice providing an opportunity of personal hearing to the petitioner. By placing the said reminder notice on record, learned counsel pointed out that a personal hearing was offered to the petitioner on 05.09.2023. He also pointed out that such opportunity of personal hearing was provided in the show cause notice dated 07.03.2023.

6. Turning to the merits of the matter, learned counsel submits that the impugned orders record the conclusions of the Intelligence Wing following an inspection of the petitioner's registered place of business. He also submits that the petitioner did not submit



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documents to establish purchase and receipt of goods. Instead, the petitioner stated in paragraph 9 of the reply that the authority cannot compel the petitioner to carry on business in a particular manner and that the supporting documents were available with the accountant. Although this reply was issued on 03.04.2023, learned counsel submits that documents to establish purchase and receipt of goods were not provided even thereafter. In conclusion, learned counsel submits that the petitioner has a statutory remedy and that no case is made out for exercise of discretionary jurisdiction.

7. The intimation in Form GST DRC-01A and the show cause notice dated 07.03.2023 are on record. The said documents disclose that the Intelligence Wing had conducted inspection under Section 67 of the TNGST Act at the registered place of business of the petitioner. The following conclusions of the Intelligence Wing were set out thereunder:

“d. Analysis of the tax paid ratio shows that the



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taxable person and their major suppliers have paid meagre tax.

e. The taxable person is involved in circular transactions among 4 taxpayers.

f. The taxable person has made inward supplies to an extent of Rs.4,18,39,212.00 from various suppliers whose registration has been subsequently cancelled suo-motu by the department or by the suppliers.

g. The taxable person in their statement dated 31/08/2021 have stated that the principal place of business at Vadapalani is a residential place which is not used to store the goods and the registered additional place of business at #131/3, Pathapalayam Village, Gummidipundi-601 201 is used as a godown, but, all the e-way bills (inward/outward) are generated to the principal place of business. Further, on inspection of the said additional place of business by the Intelligence wing officials, it had been found that the no such godown was functioning. Moreover, the taxable person has failed to furnish supporting documents such as lorry receipt/weightment receipt to prove the actual movement of goods."



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8. In the reply to the intimation, the petitioner stated as under with regard to its principal place of business and the submission of documents to establish purchase and receipt of goods. Paragraphs 9 to 12 are set out below:

“9. The authority has stated that the tax paid ratio of the taxpayer as well as the suppliers are very meagre. The authority may aware of the fact even for thin margin we are able to survive in the market because of the quantum of turnover and in any increase in value would pave way for entry of our competitor and therefore, all most all players in this segment doing business on a thin margin to survive or thrive in the market and it is moreover it is a business strategy and therefore, mere profit margin cannot be ground for rejection of input tax credit on the presumption that we involved in circular trading.

10. The authority has adduced further reason that some of our suppliers registration were cancelled subsequent to the transaction. It is relevant to note that we are not responsible for the cancellation of the suppliers



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registration which happened after we effected purchases from them. Since we have relied on the certificate of registration alive on the day of purchase and for the incident that took place after the purchase date cannot be a ground for rejection of input tax credit.

11. It has been stated in the intimation that the business place is not sufficient to do the business and the godown which is registered under the Act was not in existence at the time of inspection. In this regard, we wish to state that initially we thought of storing goods in the godown but, thereafter we decided to sell the goods immediately on receipt of the goods without either unloading or storing the goods in any place and therefore, we did not have any godown and did the business from the principal place of business. The authority may aware that the act cannot compel a person to do business in a particular manner and it is up to the businessman to arrange his business in such a way that is suitable to him and therefore, it cannot be expected that the goods should be stored in a place and then only the sale can be effected.

12. We also deny the allegation that we failed to furnish supporting documents during the course of inspection because all the supportive documents were



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available with our accountant and he was out of station during the inspection time. This fact was brought to the notice of the inspecting officers and we assured them we would produce the same before the authorities the moment our accountant returns from outstation. Therefore, we request the authority to permit us to produce the supportive documents for verification and accordingly fix a date for furnishing of the same and personal hearing cooperate with them. "

9. In the impugned order, after considering the aforesaid, the assessing officer recorded in relevant part as under:

".. .. They have argued that they are entitled to claim input tax credit as per law and alleged payment back of amount to purchasing dealer by the supplier cannot be presumed without supporting documents such as ledger copy, invoice copies, physical occurrence of movement of goods, bank payment proof etc. Hence, their contention put-forth by them is not acceptable. As per verdict of the Hon'ble High Court, the tax payer has not come forward and not proved their genuineness of input credit availed."



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10. The first question that falls for consideration is whether principles of natural justice were violated. The documents on record disclose that both an intimation and show cause notice were issued and admittedly received by the petitioner. The show cause notice clearly states that the petitioner was being provided an opportunity of personal hearing. Likewise, the reminder notice dated 02.09.2023 also indicates that a personal hearing was being provided to the petitioner on 05.09.2023. As contended by learned counsel for the petitioner, it is no doubt anomalous that such personal hearing was provided before the last date fixed for the submission of a reply. Even so, nothing prevented the petitioner from attending the personal hearing and thereafter submitting a reply to the show cause notice. Admittedly, this was not done. Therefore, I conclude that principles of natural justice were not violated.



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11. The next question that arises for consideration is whether the impugned orders call for interference on any other grounds. The contention of learned counsel for the petitioner that the impugned orders do not contain any findings on the conclusions of the Intelligence Wing is correct. However, under Section 16 of the TNGST Act read with Rule 36 of the rules framed thereunder, the registered person is under an obligation to establish purchase, including receipt of goods or services, as the case may be. After stating in the reply dated 03.04.2023 that relevant documents were with the accountant who was out of station on the date of inspection, in spite of having sufficient opportunity, the petitioner did not submit the same later. Ordinarily, the petitioner would be required to produce invoices, e-way bills, payment receipts, lorry receipts, delivery challans and the like to establish purchase and receipt of goods. Since the impugned order was issued primarily on the basis that such documents were not submitted by the petitioner, it is not appropriate to adjudicate this issue in exercise of discretionary



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jurisdiction when the petitioner has an alternative remedy.

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12. For all the reasons set out above, the orders impugned herein do not call for interference under Article 226 of the Constitution of India. Accordingly, the writ petitions are disposed of by leaving it open to the petitioner to impugn the orders impugned herein by way of statutory appeals. Since the 30 day period to condone delay in filing appeals has not expired, if appeals are presented within two weeks from the date of receipt of a copy of this order, the appellate authority is directed to receive and dispose of the same on merits. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

02.02.2024

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Index : Yes / No

Internet : Yes / No

Neutral Citation: Yes / No

To

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Assistant Commissioner (ST)(FAC),
Vadapalani Assessment Circle,
Greens Road, Annexe Building,
Chennai-600 006.

SENTHILKUMAR RAMAMOORTHY,J
rna

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