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W.P.No.3505 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.3505 of 2024
and W.M.P.Nos.3758 & 3759 of 2024

M/s.Engineering Tools Corporation,
Represented by its Partner,
No.162, Broadway,
Chennai-600 108.

... Petitioner

-VS-

The Assistant Commissioner (ST),
Broadway Assessment Circle,
No.32, Integrated Commercial
Taxes Office Complex, Room No.304,
3rd floor, Elephant Gate Bridge Road,
Vepery, Chennai-600 003.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in GSTIN:33AAAFE2599Q1ZY/2017-2018 and quash the order dated 30.12.2023 passed therein.

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For Petitioner : Mr.P.V.Sudakar

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For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader (T)

ORDER

The petitioner assails an assessment order dated 30.12.2023 by which the Input Tax Credit (ITC) availed of by the petitioner was reversed on the ground that the GST registration of the relevant supplier was cancelled with retrospective effect.

2. The petitioner asserts that he had purchased goods from M/s.Shikhar Technologies in 2017-2018 and that such purchases are supported by tax invoices, e-way bills, transport documents and proof of payment to the supplier through regular banking channels. In spite of submitting all these documents, it is stated that the ITC was reversed solely on the ground that the registration of the petitioner's supplier was cancelled with retrospective effect.

3. Learned counsel for the petitioner invites my attention to the operative portion of the impugned order and points out that ITC was



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reversed exclusively on the ground that the GST registration of M/s.Shikhar Technologies was cancelled with retrospective effect.

4. Mr.C.Harsha Raj, learned Additional Government Pleader, accepts notice on behalf of the respondent. He submits that it is a fairly prevalent phenomenon that bill trading is undertaken by creating documents like tax invoices, e-way bills and the like.

5. The operative portion of the impugned order is as under:

“Observation of the Proper Officer:

The taxpayer has made purchase from non-existent person whose registration has been cancelled with retrospective effect on 03.11.2021. If Tvl.SHIKHAR TECHNOLOGIES is a genuine Tax Payer, then Tvl.ENGINEERING TOOLS CORPORATION should have filed the proof for the existence of Tvl.SHIKHAR TECHNOLOGIES. Instead they have stated that they are purchasing goods from them and claimed ITC based on the purchase bills. Hence, it is proved beyond doubt that Tvl.SHIKHAR TECHNOLOGIES is a Non-Existent dealer and issued fake invoices to the beneficiaries. In view of



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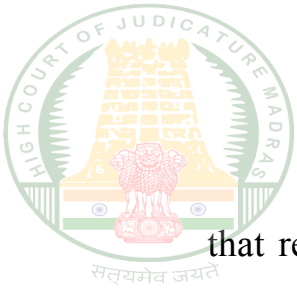


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the above facts, the contention is not sustainable and it is overruled. Therefore the above proposal is hereby confirmed.”

From the above extract, it is abundantly clear that the contentions of the petitioner were rejected entirely on the ground that the petitioner should have proved the existence of M/s.Shikhar Technologies. The petitioner purchased goods in 2017-2018 and, at the highest, the petitioner may be called upon to produce evidence of the existence of the supplier at the relevant point of time. In addition, the petitioner may be called upon to prove that the transaction was genuine by providing relevant documents such as tax invoices, e-way bills, lorry receipts, delivery challans, proof for payment and the like. In the case at hand, it appears that the petitioner submitted such documents but these documents were disregarded. The impugned assessment order is unsustainable in the facts and circumstances.

6. Hence, the impugned assessment order is quashed and the matter is remanded for reconsideration. The assessing officer is directed to consider whether the transaction was genuine by examining all relevant documents in



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that regard. The ITC claim shall not be rejected upon such reconsideration solely on the ground that the supplier's GST registration was cancelled with retrospective effect and a fresh assessment order shall be issued upon reconsideration, after providing a reasonable opportunity to the petitioner, within a maximum period of two months from the date of receipt of a copy of this order.

7. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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SENTHILKUMAR RAMAMOORTHY,J.

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To

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