IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.06.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.35782 of 2015

Gail India Pvt. Ltd.,
rep. by its Deputy General Manager
Mr.A.Anbarasan,
Adiyakkamangalam, Tiruvarur Taluk. ...Petitioner

Vs.

The Commercial Tax Officer
Nagapattinam Assessment Circle,
Commercial Taxes Buildings,
Court Campus, Veliyapalayam,
Nagapattinam. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records relating to the order in CST/223494/2006-2007, TIN/330439000682/2006-07, dated 26.06.2015, passed by the respondent, and to quash the same as arbitrary and illegal, and to direct the respondent to revise the assessment under Section 84 of the TNVAT Act, 2006 restoring the ITC wrongly reversed.

For Petitioner : Mr.Joseph Prabakar

For Respondent : Mr.S.Manoharan Sundaram
Additional Government Pleader

O R D E R

The petitioner, M/s.Gail India Private Limited, is an assessee on the files of the respondent, under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as 'TNVAT Act') and Central Sales Tax Act 1956 (hereinafter, referred to as 'CST Act'). The challenge in this Writ Petition is to the order passed by the respondent, for the year 2006-07.

2. The petitioner declared the total and taxable turnover for the year 2006-07, under the provisions of CST Act, and they were deemed to have been assessed, as per Section 22 (2) of TNVAT Act read with 9 (2) of CST Act. On verification of records, it was found that the petitioner, in their letter, dated 09.05.2007, stated reasons for reversal of credit of input

tax given effect to by them in the monthly returns in Form-I, filed under the TNVAT Act, 2006, for the months of January, 2007, February, 2007 and March, 2007.

3. According to the respondent, the reversal of input tax credit given effect to, is not actually the reversal of input tax credit, but the same is the VAT amount, not availed, and this amount was shown as reversal credit, because of the reason that there is no appropriate column in the monthly return form. After taking note of the decision of the Sales Tax Appellate Tribunal, (STAT) in the Second Appeal filed by the petitioner, for the earlier assessment year, the respondent issued a notice to the petitioner, dated 16.12.2014, proposing to revise the returns by exercising power under Section 27 of the TNVAT Act. The objection filed by the petitioner was considered by the respondent, and order has been passed, rejecting the stand taken by the petitioner.

4. After elaborately hearing Mr.Joseph Prabakar, the learned counsel appearing for the petitioner as well as Mr.S.Manoharan Sundaram, learned Additional Government Pleader, for the respondent, who pointed out that the decision of the Tribunal in T.A.No.23 of 2010, is of little avail to the petitioner, since the decision was rendered without taking into consideration of Section 41 of the TNVAT Act. It is clear that the petitioner's claim for refund was disbelieved and the claim stood rejected on factual grounds.

5. The issue involves complicated and disputed questions of fact, and therefore, necessarily, the petitioner has to avail Appeal remedy available under the statute.

6. For the aforesaid reason, this Court is not inclined to entertain the Writ Petition against the impugned order, but inclined to direct the petitioner to avail the Appeal remedy. Accordingly, the Writ Petition is disposed of, directing the petitioner to file Appeal as against the impugned order, and if such Appeal is filed within a period of 30 days from the date of receipt of a copy of this order, the same shall be entertained by the Appellate Authority, without reference to the limitation aspect. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Commercial Tax Officer
Nagapattinam Assessment Circle,
Commercial Taxes Buildings,
Court Campus, Veliyapalayam,
Nagapattinam.

+1 cc to Mr.Joseph Prabakar Advocate sr.36125
+1 cc to Special Government Pleader sr.36199

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