

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.2207 and 2266 of 2020
and
W.M.P.Nos.2582 and 2644 of 2020

M/s.BVD Power Private Limited,
(formerly Balavimodhan Power Process Pvt.Ltd.)
rep. by its Managing Director,
K.R.Dhanasekar,
S/o.K.R.Ramasamy,
aged about 54 years,
26J, Tamil Nagar, Gobi,
Erode District, Tamil Nadu-638 452.

..Petitioner in both W.Ps.

vs.

1.The State Tax Officer,
State Tax Office,
Commercial Taxes Building,
No.84/36, Bharathi Street,
Gobichettipalayam-638 452. .. 1st Respondent in both W.Ps.

2.The Deputy Commissioner (State Tax) (FAC),
Commercial Taxes Building,
No.1, Brough Road,
Erode-638 001.

3.The Appellate Deputy Commissioner (ST),
Commercial Taxes Building,
No.1, Brough Road,
Erode-638 001 ..Respondents 2 & 3 in W.P.No.2266 of 2020

Prayer in W.P.No.2207 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Certiorari or any other writ, direction or order in the nature of a writ calling for the records in the proceedings in Form GST DRC - 07 in Order No.33AADCB0284H1Z1 dated 08.12.2018 passed by the Respondent for the tax period July-2017 to December-2017 and quash the same.

Prayer in W.P.No.2266 of 2020: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ order or direction in the nature of writ of Certiorarified Mandamus or any other writ, direction or order in the nature of a writ calling for the records in GSTIN No.33AADCB0284H1Z1/2017-18 dated 09.07.2019 on the file of the 2nd respondent for the tax period July-2017 to December-2017 and directing the 3rd respondent to admit the appeal filed on 16.04.2019 against the order in Form GST DRC - 07 dated 08.12.2018 passed by the 1st respondent and dispose the appeal on merits with accordance with law or pass such further order.

For Petitioner : Mr.M.P.Senthil Kumar(In both W.Ps.)

For Respondents: Mr.A.N.R.Jayaprathap
Government Advocate(In both W.Ps.)

COMMON ORDER

By this common order, both the writ petitions are being disposed. In W.P.No.2266 of 2020, the petitioner has challenged the impugned order dated 8.12.2018 denying the transitional input tax credit availed by the petitioner for the period between July 2017 and December 2017 on the works contact.

2. Against the said order, the petitioner had attempted to upload the appeal. However, the petitioner was unable to upload the appeal memorandum. Since the petitioner encountered difficulties in uploading the said appeal memorandum through the website of the Government, the petitioner sent a written representation in person regarding the difficulties by it faced.

3. As the petitioner was unable to upload the appeal on the website, the petitioner manually filed the appeal on 16.4.2019. The Deputy Appellate Commissioner proceeded to pass the impugned order dated 9.7.2019 and has dismissed the same on the ground that it is time barred under Section 107 (1) of the Tamil Nadu Goods and Service Tax Act, 2017. Under these circumstances W.P.No 2207 of 2020 has been filed.

4. I have considered the arguments and perused the records. The failure on the part of the petitioner to file the appeal in time was on account of the attempt of the petitioner to unsuccessfully upload the appeal memorandum on the website of the 1st respondent.

5. This resulted in the delay and therefore the petitioner

filed the appeal manually on 16.4.2019 by which time the limitations had expired under Section 107(1) of the Tamil Nadu Goods and Service Tax Act, 2017. I find merits and the contentions raised by the petitioner.

6. Under these circumstances, the impugned order dated 9.7.2019 is quashed and accordingly the Appellate Deputy Commissioner is directed to take up the appeal filed by the petitioner and dispose the same on merits in accordance with law.

7. The appellate Deputy Commissioner shall pass order within a period of 45 days from the date of receipt of copy of this order. In view of the above, there is no necessity to pass any separate order in W.P.No.2266 of 2020.

8. Accordingly, both the writ petitions stand disposed with the above observation. Consequently, connected miscellaneous petitions are closed. No cost.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

gbi

To

1.The State Tax Officer,
State Tax Office,
Commercial Taxes Building,
No.84/36, Bharathi Street,
Gobichettipalayam-638 452.

2.The Deputy Commissioner (State Tax) (FAC),
Commercial Taxes Building,
No.1, Brough Road, Erode-638 001.

3.The Appellate Deputy Commissioner (ST),
Commercial Taxes Building,
No.1, Brough Road, Erode-638 001

+2cc to Mr.G.Baskar, Advocate, S.R.No. 7926 & 7927

+1cc to the Special Government Pleader(Taxes), S.R.No. 8768

W.P.Nos.2207 and 2266 of 2020
and

W.M.P.Nos.2582 and 2644 of 2020

NR(CO)
GN(18/03/2020)