IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.01.2020
CORAM
THE HON'BLE MR. JUSTICE C. SARAVANAN
W.P.No.20750 of 2012
and MP.No.1 of 2012

M/s.Wheel Marketing
rep by its Proprietor
No.28, Muthunaicken Street,
Chennai-1.

... Petitioner

vs.

The Assistant Commissioner (CT),
Mannady (West) Assessment circle,
No.191, NSC Bose Road,
Chennai - 1.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying, for the issuance of Writ of Certiorari to call for the records of the respondent in the impugned order in CST/71534/2008-09 dated 28.03.2011 and quash the same as ultra virus and contrary to law.

For Petitioner : M/s.C.Rekha Kumari.

For Respondent : Mr.M.Hariharan, AGP (Tax).

ORDER

Heard the learned counsel for the petitioner and the respondent.

2.In this writ petition, the petitioner has challenged the impugned order dated 28.3.2011 passed by the respondent in CST/71534/2008-2009. By the impugned orders, the respondent has sought to deny input tax credit availed by the petitioner under the provisions of the Tamil Nadu VAT Act, 2006 on the ground of higher rate of sale was paid and deficiencies in the filing of C Form in respect of certain portion of the turnover.

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3.The respondent has justified the impugned order in their counter. The respondent further submitted that the petitioner has an alternate remedy before the Deputy Appellate Commissioner under Section 51 of the Tamil Nadu VAT Act, 2006 and therefore the present writ petition is liable to be dismissed. It is further submitted that the reversal of input tax credit was pursuant to a circular issued by the Government.

4.The impugned order is a deemed assessment passed under Section 87A of the Tamil Nadu VAT Act, 2006. It is noticed that the impugned assessment CST/71534/2008-2009 actually pertains to assessment under the provisions of the Central Sales Tax Act, 1956. Therefore, it was not open to the respondent to mix up and club both amounts due under the same order of assessment by invoking the above provisions of the Tamil Nadu VAT Act, 2006.

5.Therefore, the impugned order insofar as it demands an amount under Section 19(5) of the Tamil Nadu VAT Act, 2006 is concerned, the impugned order is set aside and the case is remitted back to the respondent. The impugned order shall however be treated as a show-cause notice under Tamil Nadu VAT Act, 2006 to that extent for denial of credit under Section 19 (5) of the TNVAT Act 2006.

6.The petitioner may give its reply/representation if any, within a period of 30 days from the date of receipt of copy of this order. The respondent shall pass an appropriate orders within a period of 30 days thereafter after complying with the principles of natural justice.

7.The present writ petition stands allowed with the above observation. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VI)

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//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Mannady (West) Assessment circle,
No.191, NSC Bose Road,
Chennai - 1.

+1cc to M/s.C.Rekha Kumari, Advocate sr.1965
+1cc to Special Government Pleader(Taxes) sr.1542

W.P.No.20750 of 2012

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