IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2021

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.7658 OF 2021
&
WMP.NO.8173 OF 2021

M/s.Clean Switch India Pvt Ltd
Rep. By Director
Plot.102/36, 1st Floor,Defence Officers Colony
Ekkattuthangal, Chennai-600032 ...Petitioner

Vs.

The State Tax Officer,
Nandambakkam Assessment Circle,
17, Loganathan Nagar, 2nd Street,
Choolaimedu, Chennai-600094
...Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorari calling for the records of the respondent in order dated 15.12.2020 in TIN:33970907769/2015-16 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.ANR Jayaprathap
Government Advocate

O R D E R

Mr.ANR.Jayaprathap, learned Government Advocate accepts notice for the respondent and is armed with instructions to proceed with the matter.

2.The petitioner challenges an order of assessment dated 15.12.2020 for the period 2015-16 passed in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act'). This is the second round of litigation as far as this petitioner is concerned.

3. The petitioner had originally challenged assessment dated 24.01.2020 for the same period by way of a writ petition in W.P.No.12271 of 2020, which was disposed on 08.10.2020. Since there was a violation of principles of natural justice, the impugned order of assessment was to be treated as a show cause notice in response to which the petitioner would file a preliminary reply within a period of four weeks without awaiting any further notice. If such reply were received from the petitioner within four weeks, proceedings for assessment shall be taken up, the petitioner heard and order of assessment passed de novo in accordance with law.

4. The petitioner filed a reply dated 24.10.2020, which was followed by revision notice dated 29.10.2020. The petitioner was directed to furnish details of remittance in regard to the claim of input tax credit (ITC) on transactions with PG Renewables Pvt.Ltd (seller) for verification. The case of the petitioner is that the entity was functioning at the time when the transactions were concluded and thus it was eligible to the ITC claimed. The case of the revenue is, however, that the said entity has been treated as defunct right from the date of its registration i.e., on 01.03.2014.

5. Communication dated 29.10.2020 puts the petitioner to notice that the registration certificate of the seller was cancelled with effect from 31.03.2014 for non-filing of monthly returns, no tax payments have been made by the seller from the date of registration and according to the data available in the Department, there were mismatches between the details set out in the petitioners returns and those set out in the case of the seller. Clarifications were sought from the petitioner in regard to the aforesaid issue. The assessee was also given a personal hearing notice with date and time fixed.

6. The petitioner responded on 11.11.2020. The main argument appears to be the reiteration of its submission that the cancellation was only with effect from 31.03.2014 and hence the registration was valid on the date on which purchases was made entitling it to the grant of ITC. Reliance is placed on a decision of this Court in The Assistant Commissioner Vs. Bhairav Trading Company [(2016) 96 VST 315]. Further reply dated 20.11.2020 was also filed before the Assessing Authority.

7. A final show cause notice for revision of assessment was issued on 27.11.2020 crystallizing the issue for assessment specifically calling for the production of lorry receipts or any other document to evidence outward movements of goods. The director of the company was called for a personal hearing.

8. The petitioner, in subsequent replies dated 28.11.2020, 03.12.2020 and 04.12.2020 has informed the officer that the directors were pre-occupied and could thus, not appear before the Authority. This culminated in order dated 15.12.2020. As far as personal hearing is concerned, I find sufficient opportunity has been granted to the petitioner. On merits, the officer has taken a considered view of the matter and no legal infirmity or flaw is even pointed out, let alone established.

9. A point raised in the order of assessment is that, with the resignation of the one of the two directors of the company, it stands automatically dissolved. Even assuming that this point was not put to the petitioner earlier, as the aforesaid observation is only incidental and merely to support the conclusion of the officer that the PG Renewables Pvt. Ltd. was not functioning or transacting during the period in question. The conclusion in the order of assessment is to the effect that has not produced any material in support of its contentions either by way of receipts or contemporaneous material. This is a question of fact. I thus find no legal flaw or fallacy in the impugned order warranting interference under Article 226 of the Constitution of India.

10. This writ petition is dismissed in the above terms. Connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The State Tax Officer,
Nandambakkam Assessment Circle,
17, Loganathan Nagar, 2nd Street,
Choolaimedu, Chennai-600094

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.19293
+1cc to the Special Government Pleader, S.R.No.19595

W.P.Nos.7658 of 2021

EV(CO)
CS/01/07/2021