IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.24145 & 24267 of 2021
and
W.M.P.Nos.25464 & 25581 of 2021

(Through Video Conferencing)

M/s AGS Agencies,
Represented by its Proprietor
Mr.A.Gnanasekar
No.78, Ground, AGS Towers,
Old Salem Road,
Dharampuri – 636701. ... Petitioner in both WPs

Vs

1. The Assistant Commissioner (ST),
Office of the Assistant Commissioner (ST),
Dharampuri Assessment Circle
C.T.Building, Salem-Dharampuri Main Road,
Dharampuri
Tamil Nadu.

2. The Branch Manager,
INDIAN BANK
Pennagaram Road,
DDDC Buildings,
Dharampuri - 636 702. ... Respondents in both WPs

Prayer in W.P.No.24145: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records in the Ref No. 54/2020 in GSTIN No.33AFPPA0315Q1ZI/2017-18 in the file of the First Respondent pertaining to the impugned order dated 25th January 2021 and quash the same as arbitrary and violative of procedures prescribed under law and consequently direct the Respondent to correct the computation error in the order and recompute the demand.

Prayer in W.P.No.24267: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified

Mandamus, calling for the records in the file number GSTIN No.33AFPPA0315Q1ZI of the first respondent pertaining to the impugned communication dated 10th of August 2021 and quash the same as arbitrary and consequently direct the Second Respondent to release the hold on the petitioner's Current Account No.719770474.

For Petitioner in both W.Ps : Ms. Jayalakshmi. P

For Respondent-1 in both W.Ps : Ms. Amirta Dinakaran Government Advocate

COMMON ORDER

It is the case of the petitioner that after introduction of GST, a sum of Rs.5,34,633/- was lying as un-utilized input tax credit in their VAT Account. According to the petitioner, the respondents called upon the petitioner to furnish documents to substantiate the aforesaid transitional credit for a sum of Rs.5,34,633/-. However, the petitioner was able to furnish invoice only for a sum of Rs.4,97,585/-.

2. It is the further case of the petitioner that a notice dated 20.11.2020 was addressed to the petitioners' factory by the respondent by calling upon the petitioner to furnish certain documents specified therein, and a hearing was fixed on 27.11.2020. It is submitted that the petitioners' head office is located at No.81,B, AGS TOWER, SALAI VINAYAGAR KOIL STREET, DHARAMPURI-636 701. The aforesaid notice remained un-served in the petitioner as the petitioner was unable to do business as a result of which the impugned order has been passed. Learned counsel for the petitioner, further submits that petitioner became aware of the impugned order only after form GST DRC -09 was issued to the petitioners' INDIAN BANK Pennagaram Road, Dharampuri - 636702 to attach the account.

3. Learned counsel for the petitioner, submits that during the intervening period due to the lock-down was imposed and the petitioner was thus unaware of the above developments and therefore could not participate in the proceedings or write letters to the respondents immediately during the lock-down period.

4. Learned counsel for the petitioner, submits that if one opportunity is given to the petitioner, the petitioner will be able to explain the transition available to the petitioner as on the date of the introduction of TNGST Act, 2017 & CGST Act, 2017 was only Rs.5,34,633/- and the petitioner will be able to co-relate the transitional credit for a sum of Rs.4,97,585/- and that the demand confined in the impugned order was incorrect.

5. Appearing on behalf of the learned counsel for the respondent, submits that adequate notice was given to the petitioner and petitioner failed to avail the opportunity. It is further submitted that after the impugned order dated 25.1.2021 was passed also the petitioner did not come forward by filing suitable applications under the provisions of the Act. It is further submitted that the impugned order was correctly sent to the address given by the petitioner at the time of registration and therefore, no fault cannot be found with the respondent.

6. Heard learned counsel for the petitioner and the respondents and perused the impugned order and the communication preceding the impugned order dated 10.08.2021, 25.01.2021 in GST DRC-09. There is no clarity on what basis an amount of Rs.10,32,218/- has been determined in the impugned order. The petitioner has also not filed a reply in response to notice dated 20.11.2020. Ultimately, if the petitioner is liable to establish that the amount of Rs.5,34,633/- was the transitional credit in TRANS-1 it cannot be denied by the respondent. On the other hand if the petitioner is liable to pay any tax, it requires a detailed consideration by the respondents. Considering the same the impugned orders are quashed and the case is remitted back to the 1st respondent to pass a speaking order within the period of 45 days from the date of copy of receipt of this order. The petitioner is given liberty to file appropriate reply to the notice dated 20.11.2020 within a period of 15 days from the date of receipt of this order. The petitioner shall appear before the 1st respondent on 20th of December, 2021 and make oral submission.

7. The order to be passed by the 1st respondent shall be after due compliance within the principles of natural justice and after affording an opportunity of hearing to the petitioner.

The writ petitions are allowed in terms of the above observations, consequently connected writ miscellaneous petitions are also closed. There shall be no order as to costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

nst

To

1. The Assistant Commissioner (ST),
   Office of the Assistant Commissioner (ST),
   Dharampuri Assessment Circle
   C.T.Building, Salem-Dharampuri Main Road,
   Dharampuri
   Tamil Nadu.

2. The Branch Manager,
   INDIAN BANK
   Pennagaram Road,
   DDDC Buildings,
   Dharampuri - 636 702.

+1cc to M/s.S.Venkataraman, Advocate Sr.61358

W.P.Nos.24145 & 24267 of 2021
and
W.M.P.Nos.25464 & 25581 of 2021

vsn Ii[co]
srg 17/12/2021