IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.25979 OF 2021
AND
W.M.P.NOS.27432 & 27433 OF 2021

(THROUGH VIDEO CONFERENCING)

M/s.Annalakshmi Traders,
Represented by its Proprietor K.Mohankumar,
No.87/2, Udumalai Road,
Pollachi, Coimbatore District. ... Petitioner

Vs

The Assistant Commissioner (ST),
Pollachi (East) Assessment Circle,
Pollachi. ... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in original impugned order of the respondent in TIN:33042261479/2015-2016 dated 28.10.2021 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Ms.Amirta Poonkodi Dinakaran
Government Advocate

ORDER

The petitioner has challenged the impugned Assessment Order dated 28.10.2021 for the Assessment Year 2015-2016. The aforesaid impugned Assessment Order preceded a notice dated 18.12.2018 and a reply of the petitioner dated 03.01.2019.

2. It is the specific case of the respondent that the

petitioner had effected sale of goods without payment of tax on the strength of which the purchasing dealers availed Input Tax Credit under Section 19 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the TNVAT Act) and thus caused loss to the revenue.

3. On the other hand, it is the case of the petitioner that the petitioner is engaged in sale of exempted goods namely Paddy and Rice which are exempted in It.No.62, Part-B, 4th Schedule of the TNVAT Act, 2006 and therefore the petitioner had neither charged tax nor paid tax and therefore the petitioner cannot be held liable in fraudulent availment of Input Tax Credit by the dealers whose information has been obtained from the web portal.

4. It is the specific case of the petitioner that the petitioner called upon the respondent to furnish copies of the Bills/invoices have been alleged issued by the petitioner, mode of transport to the buyers as well as the mode of payment to the buyers so as to enable the petitioner to file a proper reply.

5. The learned counsel for the petitioner further submits that despite the same the respondent has passed the impugned Assessment Order dated 28.10.2021. It is submitted that in absence of any direct evidence to show that the petitioner has effected sale of any taxable goods for a person to avail Input Tax Credit, liability cannot be fastened on the petitioner.

6. Opposing the prayer, the learned Government Advocate for the respondent would submit that the petitioner has an alternate remedy and therefore the petitioner should be asked to workout the remedy before the Appellate Commissioner under Section 51 of the TNVAT Act, 2006.

7. By way of rejoinder, the learned counsel for the petitioner submits that pursuant to the order passed by this Court in M/s.JKM.Graphics Solutions Private Limited Vs The Commercial Tax Officer, (2017) 99 VST 343 (Mad), the Principal Secretary/Commissioner of Commercial Taxes vide Circular No.05 of 2021, LW10/12521/2016 dated 24.02.2021 has laid down certain guidelines to be followed in the case of the mismatch in the Input Tax Credit.

8. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent. I have perused the impugned order.

9. It is noticed that the Principal Secretary/Commissioner of Commercial Taxes has issued the above-said Circular No.05 of 2021, LW10/12521/2016 dated 24.02.2021. It has spelt out the manner in which the issue has to be addressed and the Input Tax

Credit availed has to be reconciled on the strength of the information gathered from the website of the Government.

10. Admittedly, in this case the respondent has not followed the procedure prescribed therein. Considering the same, I am inclined to interfere by quashing the impugned Assessment Order by remitting back the case to the respondent to pass a speaking order in terms of the above-said circular/guidelines of the Principal Secretary/Commissioner of Commercial Taxes.

11. The respondent is also directed to furnish the details of the invoices allegedly issued by the petitioner on the strength of which the purchasing dealer had supposed by availing Input Tax Credit. The above information shall be furnished to the petitioner within a period of thirty days from the date of receipt of a copy of this order. The petitioner shall thereafter file a fresh reply within a period of thirty days. The entire exercise shall be carried out by the respondent within a period of ninety days from the date of receipt of a copy of this order.

12. This Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nst/arb

To

The Assistant Commissioner (ST),
Pollachi (East) Assessment Circle, Pollachi.

+1cc to Mr.S.Ramanathan, Advocate, S.R.No.65965
+1cc to the Special Government Pleader, S.R.No.66728

W.P.No.25979 of 2021
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PM(CO)
PM/04/01/2022