IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23-04-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.29756 of 2018

M/s.IGP Engineers Private Limited,
\Represented by its Authorised Signatory,
No.79, Valmiki Street,
Thiruvanmiyur,
Chennai-600 041.
... Petitioner

vs.

Assistant Commissioner, (ST) (FAC),
Esplanade Assessment Circle,
Chennai-600 001. ... Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent and to quash the assessment proceedings in TIN No.33690100107/2014-15 dated 01.10.2018 as illegal and direct the respondent to refund the excess amount of Rs.59,98,846/- as per the assessment order in Form P for the assessment year 2014-2015 in TIN 33690100107/2014-15 dated 23.09.2016 and to issue any further direction.

For Petitioner :Ms.Adithya Reddy

For Respondent :Mr.M.Hariharan,
Additional Government Pleader
(Taxes).

O R D E R

The order issued by the respondent-Assistant Commissioner in proceedings dated 01.10.2018, rejecting the claim of the writ petitioner for refund is under challenge in the present writ petition.

2. The petitioner states that the representation was submitted to the Authority, pointing out the clerical error with

reference to the returns filed for the month of January 2015, a sum of Rs.60 lakhs was wrongly deducted from their available ITC as refund claimed for export sales. The petitioner was deemed to be assessed accordingly for the year 2014-2015 under Section 22 (2) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act, 2006', in short).

3. The learned Additional Government Pleader (Taxes), appearing on behalf of the respondent raised the preliminary objection on the ground that the petitioner should have applied for refund under Section 18(3) of the TNVAT Act, within 180 days by filing Form W under Rule 11(2), since the ITC represents ITC towards exports. However, the said appeal is disputed by the writ petitioner.

4. This Court is of the considered opinion that such disputed facts and circumstances are to be adjudicated with reference to the documents and evidences to be produced by the respective parties before the Competent Authority.

5. In the present case, a revision is provided under Section 54 of the TNVAT Act.

6. Admittedly, the petitioner approached this Court without exhausting the revisional remedy contemplated under the Act. The Principles of Law expects that an aggrieved person has to exhaust the statutory remedies available and the writ petition is to be filed only after exhausting the remedies contemplated. Moreover, there are certain disputed facts and circumstances raised.

7. The learned Additional Government Pleader (Taxes), appearing on behalf of the respondent states that the application is to be filed within a period of 180 days and the petitioner has filed the application beyond the period of limitation. The petitioner states that such a fact is incorrect and they have got valid reason for filing an application. However, those disputed facts are to be adjudicated by filing an appeal before the Revisional Authority, more specifically, under Section 54 of the Act.

8. The High Court cannot conduct such roving enquiry with reference to the disputed facts and circumstances, which is to be done based on the documents and evidences.

9. In this view of the matter, the petitioner is at liberty to approach the Revisional Authority under Section 54 of the Act, for the purpose of redressing the grievances. In the event of filing any such revision petition, the Appellate Authority

has to consider the same on merits and in accordance with law by affording an opportunity to the writ petitioner.

10. With the above observations, the writ petition stands disposed of. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Svn

To

The Assistant Commissioner, (ST) (FAC),
Esplanade Assessment Circle,
Chennai-600 001.

+1cc to the Special Government Pleader Sr.25269
+1cc to Mr.Adithya Reddy, Advoctate Sr.24910

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srg 09/07/2021