BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.04.2021
CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P.(MD)No.2171 of 2019 and
WMP(MD) No.1732 of 2019

M/s. Quality Tiles and Floorings,
Represented by its Partner M.Sachin Kumar,
S.No.39/2, Kaliappan 2nd Bit Village,
Karuppayurani,
Sivagangai Main Road, Madurai. ...Petitioner

Vs.

The Assistant Commissioner (CT),
Tallakulam Assessment Circle,
Madurai. ... Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in TIN 33484884602/2013-14 dated 25.05.2018 passed by the respondent and to quash the same as illegal, arbitrary and against the judgments of this Court reported in (2017) 99 VST 341 (Mad) in the case of M/s.JKM Graphics Solutions Pvt Ltd., and pass an order afresh after affording an opportunity of personal hearing.

For Petitioner : Mr.S.Karunakar
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

O R D E R

This Writ Petition has been filed challenging the impugned order of the second respondent in TIN 33484884602/2013-14, dated 25.05.2018.

2. The petitioner is a dealer in granite slabs and tiles and an assessee registered with the respondent. According to the petitioner, original deemed assessment order was passed by the respondent on 25.05.2018, under Section 22(2) of the TNVAT Act for the year 2013-2014. Subsequent to that, notice was issued to the petitioner on 25.01.2018, proposing to revise the assessment and to levy penalty under Section 27(3) & 27(4) of the TNVAT Act, based on certain discrepancies found in the audit report. On receipt of notice, the petitioner had filed his reply dated 27.02.2018. Considering the same, though the respondent had dropped the proposal made on certain defects, they sustained the proposal for reversal of input tax credit under Section 19(15) of the TNVAT Act, alleging that the petitioner effected purchases of goods from Tvs.Manish Granites, knowingly, whose registration certificate was cancelled prior to their purchase. Hence, this Writ Petition.

3.The learned counsel for the petitioner would submit that the entire purchase effected from Tvl.Manish Granites is covered by proper tax invoice and on the basis of such tax invoice of the seller, the petitioner is claiming and availing the input tax credit on purchases within the State and hence there is no violation of Section 19(10)(a) of the TNVAT Act, warranting reversal of input tax credit. The learned counsel would further submit that though the selling dealers have not paid the taxes collected from the petitioners, it is for the Department to recover the arrears from them and the petitioner cannot be mulcted for the same. The learned counsel for the petitioner would rely upon the judgment ***reported in 99 VST page 343, Tvl.JKM Graphics Solution Pvt Ltd*** in order to substantiate his contention.

4.The learned Special Government Pleader would submit that on 27.05.2015, the Enforcement Wing Officers had inspected the business premises of the petitioner and found certain irregularities in the transactions of the dealer and *prima facie* for revision of assessment was made out and thereby show cause notice was issued to the petitioner. She would further submit that as per TNVAT Act 2006, though appeal remedy before the jurisdictional Appellate Deputy Commissioner is available to the petitioner, he has directly filed the Writ Petition without exhausting the alternative remedy. Hence, this Writ Petition is not maintainable.

5.Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent.

6. The respondent objects to the maintainability of the Writ Petition on the ground that the Act provides for an effective alternate remedy and they seek for a direction upon the petitioner to avail of the alternate remedy and dismiss the Writ Petition as not maintainable. The settled legal position is that mere existence of alternate remedy would not automatically oust the jurisdiction of this Court under Article 226 of the Constitution of India. The case has to be tested on facts, which are available before the Court and decide the issue. Therefore, this Court is of the view that this Writ Petition is maintainable.

7.The learned counsel for the petitioner relied upon the judgment of ***M/s.JKM Graphics Solution Pvt Ltdreported in 99 VST page 343,*** wherein, it has been clearly indicated that the Department should have embarked upon a proper enquiry before confronting the dealer and calling upon him to explain. Here, in the present case, none of the guidelines were followed by the respondent, while adjudicating the assessment. The petitioner's main contention is that the entire purchase effected from Tvl.Manish Granites is covered by proper tax invoice and on the basis of such tax invoice of the seller, the petitioner is claiming and availing the input tax credit. The default of the selling dealer in not filing returns or not paying tax at his end cannot result in the denial of credit to the purchasing dealer. In such circumstances, if the selling dealer fails to remit the tax, the statute provides adequate machinery for recovery of the tax from the seller, who does not file returns or pay tax. Therefore, if the selling dealer fails to pay tax, the Revenue has to proceed against the selling dealer in terms of the provisions of the Act and not deny credit to the purchasing dealer, who has fulfilled the parameters by producing the original tax invoice, filing returns and paying tax. In such cases, the assessing officer has to conduct proper enquiry, only then, the dealer would be in a position to put forth his defence and demonstrate as to how view taken by the assessing officer is without any basis. In the case on hand, such enquiry has not been conducted and the impugned order came to be passed merely after getting objections from the petitioner.

8. In view of the foregoing reasons, the impugned order in TIN 33484884602/2013-14 dated 25.05.2018 is set aside and the matter is remanded to the respondent for fresh consideration after giving sufficient opportunity to the petitioner including the opportunity of personal hearing and by conducting a thorough enquiry.

9.The Writ Petition is disposed of with the above observations and direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Assistant Commissioner (CT),
Tallakulam Assessment Circle,
Madurai

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