BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.04.2021
CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P.(MD)No.14244 of 2020 and
WMP(MD) No.11901 of 2020

Tvl.Immanuel & Co,
Represented by its Partner,
P.I.Jambert Mathuram, aged 67 years,
S/o Paulnayagam Immanuel,
No.4/136/C, Harbour Express Road,
Tuticorin - 628 008. .... Petitioner

Vs.

1.The Commissioner of Commerical Taxes,
O/o The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (ST),
Tuticorin-3 Assessment Circle,
Commercial Taxes Office,
282-A, Beach Road,
Tuticorin - 628 001. .... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the second respondent in GSTIN.33AABFI1728A1Z5/17-18 dated 07.06.2020 and quash the same.

For Petitioner : Mr.Raja Karthikeyan
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

O R D E R

This Writ Petition has been filed by the petitioner to quash the impugned order of the second respondent in GSTIN.33AABFI1728A1Z5/17-18 dated 07.06.2020.

2.According to the petitioner, he is the Managing Partner of the business concern, namely, M/s.Immanuel & Co, situate at No.4/136/C, Harbour Express Road, Tuticorin, engaging in engineering contracts and registered with the second respondent holding GSTIN.33AABF1728A1Z5. According to the petitioner, when new Goods and Service Tax regime got implemented on 01.07.2017, the petitioner got unavailed credit of Rs.1,28,37,268/- paid during the earlier regime, out of which, Rs.8,30,365/- relates to tax paid on purchases and Rs.1,20,06,903/- is pertaining to the tax deducted at Source (TDS). After the implementation of the GST regime, the petitioner claimed the said unavailed credit through TRAN-1 and the same has been carry forwarded to the new regime as input tax credit.

3.The learned counsel for the petitioner would submit that the second respondent issued a notice dated 07.01.2020, alleging that the petitioner has no excess carry forward ITC as on 30.06.2017 and proposed to disallow and reverse the entire transitional credit claimed by the petitioner, through TRAN-1. In pursuant to which, the petitioner has filed reply dated 29.01.2020, denying the allegations made by the second respondent, citing as per Section 140 of the Tamilnadu Goods and Service Tax, the input tax credit claimed through TRAN 1 is relating to the tax paid under TDS and the same is eligible to be carry forwarded to the new regime. The grievance of the petitioner is that without considering the same, the second respondent has passed the impugned order confirming the proposal, even without granting any opportunity of personal hearing, which is highly unjustified and violation of principles of natural justice. The learned counsel would also rely upon the similar order of this Court made in batch of Writ Petitions in W.P.Nos.9991 of 2019 etc and would pray to quash the impugned order.

4.On the side of the respondents, a detailed counter affidavit has been filed and the learned Special Government Pleader appearing for the respondent would reiterate the contentions raised in the counter affidavit. She would insist that the petitioner is having an appeal remedy before the concerned Appellate Authority and therefore this Writ Petition is not maintainable.

5.As pointed out by the learned counsel for the petitioner that the issue involved in the present writ petition is squarely covered by the order of this Court in batch of Writ Petitions in W.P.Nos.9991 of 2019 etc., dated 26.02.2021,wherein, the learned single judge has elaborately discussed the issue in question and the relevant paragraphs are extracted hereunder for better appreciation.

> *"28. I am thus of the view that any deduction made towards anticipated tax liability would assume the character of tax and will not change or fluctuate depending on whether it is held as credit or whether it is an adjustment against tax liability. To attribute such fluctuating character to an amount would distort the scheme of taxation and cause much difficulty in the interpretation on the various ancillary provisions. The interpretation of the provision must be such that it lends itself to certainty in its conclusion.*
> *29.Though only supportive, the substituted Rule 9 (with effect from 29.01.2016) also appears to clarify this position. While erstwhile Rule 9 dealing with tax deduction at source stated that 'any person who*

makes a deduction under Section 13 shall deposit the same so deducted' with the assessing authority, the amended rule reads 'any person liable to make deduction and payment of tax under Section 13 shall apply to the registering authority having jurisdiction over the person for a Tax Deductor Identification Number', prior to effecting such deduction. Perhaps, Legislature, by employing the language in the substituted Rule has clarified the position that the 'deposit' and 'amount' referred to in Section 13 are only of the nature of tax."

"34.A detailed circular has been issued on tax deduction at source (Circular No.54 of 2014 bearing Ref.No.D3/34075/2011) wherein the Principal Secretary/Commissioner/ of Commercial Taxes dated 14.11.2014 has issued guidelines on the subject of taxability of works contracts, including the aspects of assessment and TDS"

"36.In the light of the detailed discussion as above, the impugned orders are set aside, and the petitioners held to be entitled to transition TDS under the TNVAT Act in terms of Section 140 of the TNGST 2017. Allowed. Connected Miscellaneous Petitions are closed with no order as to costs."

6. As stated in the aforesaid order, the stand taken by the respondents that the petitioner is having an appeal remedy before the concerned Appellate Authority and therefore this Writ Petition is not maintainable cannot be accepted. At this juncture, the learned counsel for the petitioner would submit that Writ Appeal filed against the order made in the aforesaid Writ Petition has also been dismissed by this Court.

7.In the light of the above, the impugned order dated 07.06.2020 passed in GSTIN.33AABFI1728A1Z5/17-18 is hereby quashed and the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI ACT)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vrn

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

1.The Commissioner of Commerical Taxes,
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Commercial Taxes,
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2.The Assistant Commissioner (ST),
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Commercial Taxes Office,
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+1 CC to M/s.SPL GP (SR-15618[F] dated 09/04/2021)

+1 CC to M/s.B.ROOBAN, Advocate (SR-15728[F] dated 09/04/2021)

Order made in
W.P.(MD)No.14244 of 2020 and
WMP(MD) No.11901 of 2020
08.04.2021

RK (27.04.2021) 4P 5C