BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.12542 of 2018
and
W.M.P.(MD)Nos.11410 of 2018

Tvl. Sri Ram Gunny Stores,
Represented by its Proprietor,
S.Ramkumar. ... Petitioner

Vs.

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

2.The Deputy State Tax Officer,
Theni - I Assessment Circle,
Commercial Taxes Complex,
Bangalamedu,
Theni - 625 531. ... Respondents

(Cause title amended vide order dated 20.06.2018 in W.M.P.(MD)No.11895 of 2018 in W.P.(MD)No.12542 of 2018)

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarifed to call for the records pertaining to the impugned proceedings of the 2nd respondent in TIN No.33895121396/2013-14 dated 28.03.2018 and quash the same.

For Petitioner : Mr.B.Rooban
For Mr.Raja.Karthikeyan.

For Respondents : Mr.G.Arjunan,
Government Advocate.

ORDER

Tvl. Sri Ram Gunny Store is the petitioner in the writ petition. The case on hand pertains to the assessment year 2013-14. The petitioner has suffered an adverse order dated 28.03.2018 whereby tax and penalty have been imposed on the petitioner for said assessment year. The same is under challenge, in this writ petition.

2.The respondents have filed counter affidavit, seeking to sustain the the impugned order. The learned Government Advocate took me through the averments set out therein. He also would state that the writ petition has to be dismissed as not maintainable because the petitioner has not availed the alternative remedy open to him.

3.I have carefully considered the rival contentions and went through the materials on record.

4.Two defects have been pointed out by the assessing authority. The first defect rests on mismatch ascertained from the particulars found in the website maintained by the department. But it has been held in the decision reported in ***(2017) 99 VST 343 (JKM Graphics Solutions Vs. The Commercial Tax Officer)*** that in such cases, enquiry must be held with other end dealer. This procedure was not followed in this case. Therefore, on this ground, I have to necessarily interfere with the impugned order.

5.The other defect pertains to reversal of input tax credit because of non production of "C" Form declaration in respect interstate sales. This issue is again covered vide order dated 30.08.2019 in W.P.Nos.15130 of 2015 etc Batch (Bharath Traders vs. The Commissioner of Commercial Taxes and Another).

6.The learned Judge held as follows:-

> *"19. Section 8(1) of the CST Act provides the benefit of concessional rate of tax, upon production of a statutory Declaration form, to an interstate transaction with a registered dealer, and relating to specified goods. Section 8(2) stipulates that an interstate transaction with an unregistered dealer shall be visited with the same rate of tax as applicable to a domestic transaction involving identical goods. While Section 19(2)(v) extended input tax credit in respect of the transaction under Section 8(1), the same benefit was unavailable to the identical transaction with an unregistered dealer, taxable in terms of Section 8(2) of the CST Act. Though the benefit of ITC was initially restricted as an inducement to dealers to transact with registered dealers alone, Legislature has broadened, in its wisdom, the grant of benefit of ITC to transactions with unregistered dealers as well, albeit in 2015. Having taken such a decision in principle, there is no rhyme or reason to restrict the benefit only from the date of substitution. Such restriction would discriminate against transactions under*

Section 8(2) for the prior period, apart from leading to a dichotomy in the manner in which transactions in terms of Section 8(2) pre and post 01.04.2015 are assessed to tax

20. It is also not the case of the revenue that the amendment has been propelled in 2015 for a specific reason or logic and the inevitable conclusion I am led to is that legislature corrected an anamoly in 2015 by way of the amendment in question, bringing transactions under Section 8(2) also within the beneficial sweep of 19(2)(v).

21. Since the substitution in the present case only seeks to set right an anomaly it necessarily has to be effective from the date of inception of the Act itself, retrospectively."

7.Therefore, reversal of input tax credit made by assessing authority on the ground set out above is liable to be quashed. The order impugned in this writ petition is quashed. The writ petition is allowed. However, remand is made only in respect of the mismatch component alone. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

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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:

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

2.The Deputy State Tax Officer,
Sivagangai Assessment Circle,
Commercial Taxes Office,
No.3, Oversupillai Street,
Sivagangai - 630 561.

+1 CC to M/s.SPL GP (SR-10545[F] dated 11/03/2021)

+1 CC to M/s.B.ROOBAN, Advocate (SR-10641[F] dated 12/03/2021)

W.P(MD)No.12542 of 2018
10.03.2021
(4/5)

RK (27.04.2021) 4P 5C