BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.2850 of 2015
and
MP(MD)No.1 of 2015

M/s.Sree Karpagamoorthy Automobiles,
rep.by its Managing Partner
K.R.CT.Ganesan, ... Petitioner

Vs.

The Commercial Tax Officer (FAC),
Thiruppathur Assessment Circle,
Thiruppathur. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN No.33225501568/2008-09 dated 12.12.2014 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice, and direct the respondent to pass assessment order afresh after affording an opportunity of being heard to the petitioner and pass orders according to law, within such time as may be directed by the court.

For Petitioner : Mr.S.Karunakar
For Respondent : Mrs.J.Padmavathidevi,
Special Government Pleader

O R D E R

Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondent. Sri.Radha Krishnan, Commercial Tax Officer, Thiruppathur also appeared through Video Conferencing and assisted the court.

2.The petitioner is a dealer registered with the respondent. The case of the respondent is that the petitioner had erroneously claimed ITC on their closing stock as on 31.12.2006 to the tune of Rs.5,29,856/-. There was a migration of regime from TN GST Act to TNVAT Act, 2006 as on 01.01.2007. The petitioner had carried forward the said claim to the subsequent two years, namely, 2007-08 and 2008-09. This was subsequently detected during AG audit. Thereupon, orders were passed holding that the claim of ITC as on

01.01.2007 to the extent of Rs.5,29,856/- was incorrect and that it was liable to be reversed. Questioning the same, the petitioner filed an appeal before the Appellate Deputy Commissioner (CT), Virudhunagar. Vide order dated 03.06.2013, the appellate authority held that the ITC claim on closing stock is itself ineligible and confirmed the reversal of ITC for the years 2006-07 and 2007-08. In the impugned order, there has been a reversal again for the very same sum. When the case was taken up on the last occasion, I wanted to know from the counsel for the petitioner as to whether the aforesaid amount paid or not. Adjournment was taken and today, the learned counsel for the petitioner stated that the aforesaid amount of Rs.5,29,856/- was not paid. This is confirmed by Mr.Radha Krishnan, Commercial Tax Officer. Since the erroneous claim for ITC as on 01.01.2007 has already been made good, on the same cause of action, there cannot be second reversal.

3.In this view of the matter, the order impugned in this writ petition is quashed. This writ petition is allowed. As regards the payment of any interest for the preceding year, it is for the respondent to take action as per law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 (ST),

Karur (South) Assessment Circle,

Commercial Tax Building,

Karur.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-8116[F] dated 02/03/2021)

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AS(07.06.2021)3P 3C