BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P(MD)Nos.23529, 23532 and 23533 of 2019
and
W.M.P.(MD)Nos.20153, 20156 and 20159 of 2019

Tvl.Maruthi Poly Bags (P) Ltd.,
Rep. by its Managing Director,
N.Renganathan. ... Petitioner in all W.Ps

Vs.

The Assistant Commissioner (CT) (FAC),
Pudukkottai-1 Assessment Circle,
Pudukkottai. ... Respondent in all W.Ps

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records on the file of the respondent in TIN: 3384 4101032/2009-10, 2010-11 and 2011 and 2012 dated 29.08.2019 and quash the same as illegal, invalid and against the principles of natural justice.

(In all W.Ps)
For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.G.Arjunan,
Government Advocate.

COMMON ORDER

The learned counsel for the petitioner even before commencing his arguments made a statement on instructions that the petitioner would remit a sum of Rs.5 Lakhs in respect of all the three writ petitions before the respondent on or before 31.03.2021 without prejudice to their contentions. The said undertaking is recorded.

2.The petitioner is an assessee registered with the respondent. The assessment years are 2009-10, 2010-11, and 2011-12. The petitioner's assessment was finalized on deemed assessment basis under Section 22 of the Tamil Nadu Value Added Tax Act. The petitioner's business premises were inspected by the Enforcement Wing Officials following a tip-off of from the investigation wing of the Central Excise department. Based on the same, pre-revision notices were issued and after hearing the petitioner, the impugned orders came to be passed.

3.The respondent has filed a detailed counter affidavit and the learned Government Advocate took me through the contents thereof. He would also point out that the impugned orders do not call for any interference and the writ petitions deserve to be dismissed for non-availing the alternative remedy.

4.The issue involve three components, which are as follows:-
(a) sales suppression.
(b) Purchase suppression.
(c) Reversal of input tax credit.

5.As regards sales suppression, the petitioner feeling aggrieved by the action of Central Excise department filed an appeal before the Tribunal. But during the pendency of the appeal proceedings, the petitioner had availed the samathan scheme and settled the issue. From this, this Court can come to the conclusion that the petitioner is definitely liable to pay some tax dues in respect of the sales suppression. The exact quantum is left open. Likewise, the implication of the petitioner settling the central excise on the current proceeding is also left open.

6.However, as regards purchase omission, I am of the view that the impugned orders rest on thin ice. The assessing officer appears to have proceeded on an inferential basis, merely because there was sales suppression. Likewise, reversal of input tax credit also appears to be of doubtful validity. The petitioner had filed "C" Form declaration and the same was also accepted by the authority on 31.07.2015 and orders to this effect were passed by the assessing officer under CST. Even though the petitioner had referred to this aspect in his reply dated 05.10.2016 and 07.03.2019, the respondent without considering the same has effected reversal of input tax credit. The petitioner's counsel would also state that the reversal of input tax credit may not hold good in the light of the decision of this Court in Bharath Traders in W.P.No.5103 of 2015 dated 30.08.2019.

7.Since the orders impugned in the writ petitions are vulnerable in respect of defects two and three, the orders impugned in the writ petitions are quashed and the writ petitions are allowed. The matters are remitted to the file of the respondent to pass orders afresh in accordance with law. All the contentions of the petitioner are left open. However, this order will hold good only if the petitioner adheres to the undertaking to remit a sum of Rs.5 Lakhs before the respondent on or before 31.03.2020. If the petitioner fails to adhere to the said undertaking, the order now passed will stand recalled and the writ petitions will stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// 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 (CT) (FAC),
Pudukkottai-1 Assessment Circle,
Pudukkottai.

+1 CC to M/s.A.CHANDRASEKARAN, Advocate (SR-11287[F] dated 16/03/2021)

+1CC to M/s.SPL GP.SR.No. 11557 dated 16/03/2021

W.P(MD)Nos.23529, 23532 and 23533 of 2019
15.03.2021

SSS(CO)
KB(29.04.2021) 3P 4C