IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P. Nos.2869, 2875 & 2876 of 2022 and
W.M.P.Nos.2995, 2997 & 2998 of 2022

Travancore Mats and Mattings Pvt. Ltd.,
Represented by its Director V.V.Pavithran,
No.5/76B Opp LIC Office, Devapuram
Near Vellaipillayar Kovil, Bhavani P O
Erode - 638 301. ... Petitioner in all WPs

Vs

1.The Assistant Commissioner,
Office of the Assistant Commissioner (ST)
Bhavani Assessment Circle,
158/1002, Pookkadai Veethi,
Bhavani - 638 301.

2.The Senior Intelligence Officer,
Office of the ADG, DGGI Coimbatore Zonal Unit,
No.155-1, Lakshmanan Street,
Near Ukkadam Bus Stand,
Ukkadam, Coimbatore - 641 001.

3.The State Tax Officer,
Commercial Tax Officer,
Third Floor, Mini Civil Station,
Cherthala P O, Alappuzha,
Kerala - 688 524. ... Respondents in all WPs
[R2 & R3 are struck off as per
order dated 18.02.2022]

Prayer in WP.No.2869 of 2022 : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to Notice in Form GST ASMT-10 dated 07.10.2021 issued by the 1st respondent for the tax period 01.11.2017 to 31.03.2018 and quash the same as arbitrary and illegal and direct the respondents to allow the petitioner to avail the amount of differential tax to be paid by the petitioner's Bhavani Branch as input tax credit by the petitioner's Head Office at Cherthala, Alappuzha, Kerala - 688 524 bearing GSTIN 32AAICT0048GIZO.

Prayer in WP.No.2875 of 2022 : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to Notice in Form GST ASMT-10 dated 07.10.2021 issued by the 1st respondent for the tax period 01.04.2018 to 31.03.2019 and quash the same as arbitrary and illegal and direct the respondents to allow the petitioner to avail the amount of differential tax to be paid by the petitioner's Bhavani Branch as input tax credit by the petitioner's Head Office at Cherthala, Alappuzha, Kerala – 688 524 bearing GSTIN 32AAICT0048GIZO.

Prayer in WP.No.2876 of 2022 : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to Notice in Form GST ASMT-10 dated 07.10.2021 issued by the 1st respondent for the tax period 01.04.2019 to 30.04.2019 and quash the same as arbitrary and illegal and direct the respondents to allow the petitioner to avail the amount of differential tax to be paid by the petitioner's Bhavani Branch as input tax credit by the petitioner's Head Office at Cherthala, Alappuzha, Kerala – 688 524 bearing GSTIN 32AAICT0048GIZO.

For Petitioner : Mr.Joseph Prabhakar (in all WPs)

For Respondents : Mr.Richardson Wilson
Additional Government Pleader (R1)

COMMON ORDER

Since the issue raised in these writ petitions is one and the same, with the consent of the learned counsel appearing for both sides, all these writ petitions were heard together and are being disposed of by this common order.

2. The petitioner is a dealer under the GST regime. For the period from July 2017 to October 2017 i.e. after the GST Act came into effect from 01.07.2017, he had paid 12% of tax for the goods he manufactured or he dealt with. However, subsequently on advise, he had come to know that, based on the entry of the goods in question, he need not pay 12% of the tax and it is only 5%, accordingly he started to pay 5% of tax from November 2017 till April 2019.

3. Accordingly, return was filed for the relevant assessment years 2017-18, 2018-19 and 2019-20.

4. However, in respect of these returns filed by the petitioner/ assessee, there has been a notice under Section 61 of the GST Act for scrutiny and the same was replied by the petitioner.

5. Despite the reply having been made to the notice under Section 61 of the Act, according to the petitioner, once again a notice for intimating discrepancies in the return, after scrutiny under Section 61 was issued on 07.10.2021, challenging the same, the present writ petitions have been filed. Though such a challenge had been made under these writ petitions, during the hearing Mr.Joseph Prabakar, learned counsel appearing for the petitioner, on instructions, would submit that, though a challenge had been made with regard to the notice issued under Section 61 of the Act dated 07.10.2021, the petitioner has accepted the demand or the proposal made by the State Tax Authority i.e., the respondent to pay 12% of the tax for the period from November 2017 to April 2019 i.e., the remaining 7% out of 12% of the tax, as the 5% have already been paid for these period also.

6. The learned counsel would also submit that, since initially the petitioner was a partnership firm, which was subsequently converted into a Private Limited Company, therefore, the number provided for the old Partnership Firm has got changed to the new number to a Private Limited Company which is having Branch Office at Bhavani, Tamil Nadu and Head Office at Cherthala, Kerala. The relevant numbers old and new for Branch Office as well as Head Office referred to above reads thus:

> "a. Branch at Bhavani, TN.
>
> 33AABFT8331N1ZY (Old number as partnership firm)
>
> 33AAICT0048G1ZM (New number as a Private Limited Company)
>
> b. Head Office at Cherthala, Kerala.
>
> 32AABFT8331N1ZO (Old number as partnership firm)
>
> 32AAICT0048G1ZO (New number as a Private Limited Company)."

7. Citing this change in numbers, the learned counsel for the petitioner would contend that, if he paid the entire tax proposal/due on demand to the extent of 12% of the whole period of April 2019, certainly the petitioner would be eligible to claim ITC, which he can make such a claim from his Head Office to the jurisdictional GST, i.e., the State GST at the State of Kerala and if such an application is made, the ITC claim to be made by the petitioner can be permitted to be considered by the said State Tax Authorities.

8. However Mr.Richardson Wilson, learned Additional Government Pleader appearing for the respondent, who is representing the State GST, has contended that, the petitioner

was liable to pay 12% of the tax in respect of the goods he is dealing with. Though he paid 12% for some period i.e., between July 2017 and October 2017, suddenly he started paying only the lesser percentage i.e., 5% from November 2017 till April 2019.

9. When this discrepancy was noted, during the scrutiny under Section 61 of the Act, notice was issued to the petitioner and the said notice was replied by the petitioner. However, on verification of the said reply, the Assessing Authority had still found the discrepancies as the petitioner is liable to pay only 12% of tax, instead of 5%, in respect of remaining 7% he has to pay for the period from November 2017 to April 2019.

10. Therefore, an intimation had been issued about these discrepancies with a proposal to initiate proceedings against the petitioner under other provisions of the Act i.e., the notice dated 07.10.2021 under Section 61(3) of the Act. Therefore, it cannot be construed that the notice issued by the 1st respondent dated 07.10.2021 which is impugned herein is unlawful or arbitrary or against the provisions of the GST Act.

11. The learned Additional Government Pleader would further contend that, insofar as the present plea made by the petitioner side that, he would pay the remaining tax due i.e., remaining 7% of tax out of the 12% totally claimed by the Revenue and in lieu thereof they would be permitted to take the ITC at the Head Office by making a claim at the jurisdictional State GST Authorities at the State of Kerala is concerned, that issue is to be decided between the petitioner and the State Tax Authorities at Kerala, wherein the State Authorities at Tamil Nadu does not have any role to play.

12. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

13. Even though the prayer sought for in these writ petitions is against the order dated 07.10.2021 issued under Section 61 of the GST Act, now in view of the stand taken by the petitioner as projected by the learned counsel appearing for the petitioner that, the petitioner is ready and willing to pay the tax at the rate of 12% by making the payment of the remaining 7% for the period from November 2017 to April 2019, we need not traverse into the merits of the case with regard to the veracity of the impugned notice dated 07.10.2021 as literally the said challenge is given up.

14. Coming to the present plea raised by the petitioner side is concerned, this Court feels that, if the petitioner is ready and willing to make the payment of the remaining 7% totally 12% tax for the period from November 2017 to April 2019 covering the assessment year 2017-18, 2018-19 and 2019-20, it is open to the petitioner to make the said demand at the earliest.

15. Insofar as the claim of ITC is concerned, if the petitioner is eligible to claim the said ITC, it become certain that, the petitioner can very well claim that ITC from the concerned jurisdictional State GST Authority, where the petitioner Head Office is located.

16. In this context, the only apprehension raised by the petitioner counsel is that, because of change of the composition of the petitioner from Partnership Firm to Private Limited Company, there was a change of GST registration number as indicated in the above paras. Therefore, that should not be taken as a different dealer or entity instead of the petitioner and that reason cannot stand in the way in claiming the ITC by the petitioner if he is eligible to claim under the provisions of the GST Act.

17. In that view of the matter, this Court is inclined to dispose of these writ petitions with the following orders:

(i) That the challenge against the impugned orders since has been given up, the validity of the said orders are not decided in these writ petitions.

(ii) Insofar as the submission made by the petitioner side to pay the remaining tax of 7% of the total tax from November 2017 to April 2019 is concerned, such a difference of tax shall be paid by the petitioner within a period of two weeks from the date of receipt of a copy of this order.

(iii) Thereafter, it is open to the petitioner to make a claim for ITC at the jurisdictional GST Office in the State of Kerala, where the Headquarter of the petitioner company is located and if such an availment is made by the petitioner by filing the return at the Kerala Tax Authorities jurisdiction, the same shall be considered and decided as per the eligibility of the petitioner within the meaning of the provisions of the GST Act, especially Section 16 and in this regard, the change of the GST registration number between old and new, in view of the change of composition of the petitioner's Firm into Private Limited Company, shall not stand in the way.

18. With these observations and directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Vacation Officer)

//True Copy//

Sub Assistant Registrar

Sgl
To

1.The Assistant Commissioner,
Office of the Assistant Commissioner (ST)
Bhavani Assessment Circle,
158/1002, Pookkadai Veethi,
Bhavani - 638 301.

2.The Senior Intelligence Officer,
Office of the ADG, DGGI Coimbatore Zonal Unit,
No.155-1, Lakshmanan Street,
Near Ukkadam Bus Stand,
Ukkadam, Coimbatore - 641 001.

3.The State Tax Officer,
Commercial Tax Officer,
Third Floor, Mini Civil Station,
Cherthala P O, Alappuzha,
Kerala - 688 524.

+1 cc to Mr.Joseph Prabhakar, Advocate Sr.NO. 17365
+1 cc to Special Government Pleader(T) Sr.NO. 17902

W.P. Nos.2869, 2875 & 2876 of 2022

bp(CO)
A.SK(16/06/2022)