IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.5899 of 2022
and
W.M.P.Nos.5998 & 6043 of 2022

M/s.Aurum Jewels Limited
Rep.by its Authorised Signatory
Mr.Dimple Chaudhary. ... Petitioner

-Vs-

The State Tax Officer
Peddunaickenpet Assessment Circle
Integrated Building Commercial Tax
Department, Chennai 600 003. ... Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records pertaining to the order in Form GST DRC-07 in order No.221202200081028 dated 07.12.2021 passed by the respondent and quash the same as illegal and arbitrary.

For Petitioner : Mr.K.M.Malarmannan

For Respondent : Mr.C.Harsha Raj,
Additional Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Certiorari calling for the records pertaining to the order in Form GST DRC-07 in order No.221202200081028 dated 07.12.2021 passed by the respondent and quash the same as illegal and arbitrary.

2. The petitioner was originally a registered dealer under the erstwhile TNVAT Act regime and after the GST regime has come into effect from 01.07.2017, the petitioner has switched over from TNVAT Act to TNGST Act.

3. Insofar as the period of 2017-18, the allegation on the part of the Revenue against the petitioner dealer is that, there was no balance of input tax credit on VAT as on 30.06.2017. However, the unutilised input tax credit on capital goods as on 30.06.2017 is only a sum of Rs.11,05,519/- whereas the petitioner claimed under TRAN-1 return, a sum of Rs.33,25,767/-. Therefore, he has excessively claimed the unavailed input tax credit to the extent of Rs.22,20,247/- In order to reverse the same and to recover the said money, a notice was issued on 16.10.2019. However, the said notice has not been replied and despite being given an opportunity of personal hearing, that was also not utilised by the petitioner dealer.

4. Therefore, the impugned order has been passed by the Revenue on 07.12.2021 confirming the said proposal and directing the petitioner dealer to pay the said amount of Rs.33,25,707/-, as against which the petitioner has moved the present writ petition with the aforesaid prayer.

5. Heard Mr.K.Malar Mannan, learned counsel for the petitioner, who would submit that, though notice had been given as against which documents and the returns pertaining to the period concerned has been submitted by the dealer to the assessing officer, since no opportunity of personal hearing was given, the petitioner could not appear in person before the assessing authority. However, pursuant to the notice dated 16.10.2019, after two years only now the present impugned order dated 07.12.2021 has been passed. Therefore, the said order is vitiated, he contended.

6. However, Mr.C.Harsha Raj, learned Additional Government Pleader appearing for the respondent would submit that, for wrong availment of input tax credit, which was not at all available in the account of the electronic credit ledger of the petitioner, show cause notice was issued as early as on 16.10.2019, that was not replied and an opportunity of personal hearing was given to the petitioner, which was also not utilised. Therefore, the Revenue proceeded to confirm the proposal under the show cause notice and thereby the present impugned order was issued.

7. Therefore, in this regard there has been no violation of principles of natural justice and on that ground no writ petition can be filed against the impugned order, as the petitioner can very well move an appeal before the appellate authority as against the impugned order.

8. I have considered the submissions made by the learned counsel appearing on either side and have perused the materials placed on record.

9. It has been repeatedly held by this Court that, whenever there is an appeal remedy under the tax statute, that appeal remedy shall be first exhausted, without which, if at all the assessee or dealer comes before this Court invoking Article 226 of the Constitution of India , that can be entertained only under three circumstances.

i. Violation of principles of natural justice
ii. Violation of statutory provisions, and
iii. For want of jurisdiction

10. In the present case, none of the above three circumstances is available for invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, as there has been a notice issued before passing the impugned order by the Revenue and an opportunity of personal hearing was also given. This chance since has not been utilised by the petitioner, he cannot make a cry over the passing of the impugned order and therefore, the impugned order can be assailed by the petitioner on merits before the appellate authority.

11. In view of the above discussion, this writ petition is liable to be dismissed and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed. However, the dismissal of the writ petition will not stand in the way of the petitioner to approach the appellate authority against the impugned order on merits.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

KST

To

The State Tax Officer
Peddunaickenpet Assessment Circle
Integrated Building Commercial Tax
Department, Chennai 600 003.

+1cc to M/s.K.M.Malar Mannan, Advocate, S.R.No.18450
+1cc to the Special Government Pleader (Taxes), S.R.No.18297

W.P.No. 5899 of 2022

PMK(CO)
SU(28/03/2022)