IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.7451 of 2019 &
WMP.No.8109 of 2019

M/s.Shree Ganesh Steel Rolling Mills Ltd.,
Represented by its Director Mr.Ashok Kumar Saraf,
4A, Ennore High Road,
Thiruvottiyur, Chennai - 19. ...Petitioner

Vs

1. The Assistant Commissioner (ST)(FAC),
   Thiruvottiyur Asst Circle,
   Chennai - 600 019.

2. The Commercial Tax Officer (FAC),
   Group-IV, CEW-I, Enforcement-I,
   Chennai - 600 006.

3. The Joint Commissioner (CT),
   Enforcement-I, Chennai - 600 006. ...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari, calling for the impugned proceedings of the 1st respondent in TIN:33911100056/2013-14 and quash the order dated 12.11.2018 insofar as the reversal of Input Tax Credit is concerned as passed contrary to the law laid down by the Hon'ble Madras High Court in the case of M/s.Sri Vinayaga Agencies reported in 60 VST 283 and by the Division Bench of the Madras High Court in the case of Tamil Nadu Vs Infiniti Wholesale Limited reported 99 VST 341 and also in violation of the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondents: Mr.V.Prashanth Kiran,
Government Advocate

ORDER

The challenge in this matter is to an order of assessment passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') dated 12.11.2018 for the period 2013-14.

2. An assessment has been framed pursuant to an inspection by the enforcement wing on 18.12.2013 wherein certain defects are alleged to have been noticed such as sales suppression based on the stock variation, sales omission for the month of October, 2013 and non-maintenance of movement register for inward and outward movement relating to the purchase/sales transaction.

3.At the time of admission on 14.03.2019, the following order was passed:

> “Mr.Hariharan, learned Additional Government Pleader (T) takes notice for the respondents and seeks three weeks' to obtain instruction and file counter. It is seen that the impugned order rejects the claim of input tax credit by way of non-speaking and cryptic conclusion as follows:
>
> > “The dealers have not filed the above documents. In the absence of above records, the claim of ITC is not in order. Hence the reversal of ITC of Rs.38,20,630.00 proposed in this office notice is confirmed.”
>
> 2.Learned counsel appearing for the petitioner points out that the matter has a chequered history and has been hanging fire, since the first notice received by the petitioner dated 30.04.2014. Subsequent thereto, the petitioner has filed objections dated 15.09.2014, 18.12.2014, 28.09.2015 and 28.01.2016, furnishing all records called by the department. However, the impugned order makes reference only to two of the objections dated 18.12.2014 and 21.01.2016 in the reference column. Even those objections do not seem to have been taken into consideration by the respondent while passing the impugned order rejecting the claim of ITC. In the light of the aforesaid, there shall be an order of interim stay of further proceedings till 04.04.21019. List on 04.04.2019.”

4.The issue on merits relates to whether the petitioner has established the transactions in question seeing as it is the allegation of the Department that no proof has been adduced towards movement of the goods. In this connection, learned counsel for the petitioner would draw attention to its detailed objections which have been referred to in my order dated 14.03.2019 extracted above.

5.Records have been produced and learned Government Advocate confirms that barring objections dated 18.12.2014 & 28.01.2016, the officer appears to have omitted, albeit inadvertently, reference to, and analysis of the other objections filed by the petitioner, dated 15.09.2014 and 28.09.2015, though the same have been duly received and are part of the record.

6.The objections filed before the Revenue have also placed as an annexure to the Writ Petition and they indicate prima facie that some portion of the required details have been produced by the petitioner in support of its contention that the movement of goods has been duly established by it.

7.In this connection, learned counsel for the petitioner would also rely upon a deviation proposal sent by the 1st respondent for the period 2009-10. Pursuant to setting aside of the original assessment for that year by this Court on 17.08.2016 in W.P.No.24053 of 2016, a proposal dated 21.11.2017 to deviate from the report of the enforcement authorities has been made.

8. Seeing as the impugned assessment has been set aside and remanded to the file of the Assessing Authority for de novo consideration, I deem it appropriate not to make any further observations on the merits or otherwise of either the petitioner's claims or the deviation proposal made by the Assessing Officer. Suffice it to say that the Assessing Authority will consider the matter in a holistic perspective including the deviation proposal for the period 2009-10, and any developments thereafter, as well as the objections of the petitioner on this score.

9.As rightly pointed out by the learned counsel for the respondent, since there are multiple objections that have been filed by the petitioner, it would be appropriate that the petitioner file a consolidated objection for which it is granted three (3) weeks from today.

10.Upon receipt of objections, the petitioner shall be called upon for a personal hearing and a speaking order of assessment passed on the issue relating to claim of ITC only, within a period of four (4) weeks from the date of personal hearing.

11.This Writ Petition is partly allowed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (ST)(FAC),
   Thiruvottiyur Asst Circle,
   Chennai - 600 019.

2. The Commercial Tax Officer (FAC),
   Group-IV, CEW-I, Enforcement-I,
   Chennai - 600 006.

3. The Joint Commissioner (CT),
   Enforcement-I, Chennai - 600 006.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.40825

+1cc to the Special Government Pleader (Taxes) S.R.No.41558

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WMP.No.7109 of 2019

VBM(CO)
RGA(01/07/2022)