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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.12290 of 2020
and
W.M.P.No.15087 of 2020

[Video Conferencing]

M/s.Clean Switch India Pvt. Ltd.,
Rep. by Director,
Plot.102/36, 1st Floor, Defence Officers Colony,
Ekkattuthangal, Chennai 600 032 ....Petitioner

-Vs.-

The State Tax Officer,
Nandambakkam Assessment Circle,
17, Loganathan Nagar, 2nd Street,
Choolaimedu, Chennai 600 094. .....Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the Respondent in TIN33970907769/2014-15 and to quash the order dated 24.01.2020 as far as the reversal of ITC of Rs.1,95,85,373/- and consequential penalty of Rs.97,92,687/- is concerned and pass such further or other order as deem fit.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.Amirta Poonkodi Dinakaran
Government Advocate

ORDER

The petitioner has challenged the impugned order dated 24.01.2020. The impugned order precedes a notice dated 26.03.2019 which called upon the petitioner to reply and also appear for personal hearing within 15 days of receipt of the aforesaid notice. The said notice pointed out four different defects. Thereafter, the notice dated 20.06.2019 was issued intimating that the date for personal hearing was fixed on 02.07.2019 at 3.00 P.M. The petitioner appears to have filed

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four different replies meeting out the allegations in the notice dated 26.03.2019.

2.In the impugned order, the respondent has dropped the proceedings as far as three issues are concerned but has however confirmed the demand on Input Tax Credit allegedly availed twice by the petitioner during April 2014 and June 2014.

3.It is the case of the petitioner that the petitioner has replied to the very specific issue which has been confirmed in the impugned order by reply dated 26.12.2019. The impugned order states that the petitioner has not replied to the same and therefore, the petitioner has been called upon to reverse the aforesaid amount and has been imposed with the penalty under Section 27(4) of the Act.

4.The learned counsel for the petitioner submits that there is postal receipt showing the despatch of reply dated 26.12.2019 and that there was mistake in the returns filed for the respective months of April 2014 and June 2014 and that there was no double utilization of the Input Tax Credit as has been alleged in the notice dated 26.03.2019. It is therefore submitted that the impugned order has to go and the matter should be remitted back to the respondent for fresh adjudication de novo.

5.Opposing the prayer, the learned Government Advocate appearing for the respondent submits that notice dated 26.12.2019 was refused to be received and therefore, the respondents have passed the impugned order based on the records that were available with the respondent. The learned Government Advocate for the respondent further submits that there are several disputed question of facts as to whether the petitioner had indeed utilized or not utilized the Input Tax Credit twice later during the month of June 2014 once again, after having availed and utilized the credit during April 2014 and therefore, even on this score, the Writ Petition is liable to be dismissed. It is therefore submitted that the petitioner may be directed to work out the remedy before the Appellate Authority under Section 51 of the TNVAT Act, 2006.

6.Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent and also perused the impugned order.

7.The documents filed along with the Writ Petition would indicate that the petitioner had indeed sent a reply dated 26.12.2019 to the respondent as a copy of the postal receipt filed along with the reply shows the date of despatch as 26.12.2019 to the respondent. In the reply, the petitioner had

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attempted to distance itself from the liabilities on the issue relating to double utilization of Input Tax Credit after having utilized the same during April 2014 by stating that there was only a wrong entry made by the accountant in the returns. Thus, the matter would require proper adjudication and relook by the respondent.

8.Considering the fact that the impugned order states that the petitioner has not filed response when indeed the petitioner had filed response on 26.12.2019 by despatching the same through registered post, I am of the view that the impugned order deserves to be quashed and the matter would require fresh adjudication by the respondent, in the light of the submission of the petitioner in their reply dated 26.12.2019.

9.Since the dispute pertains to the assessment year 2014-15 and the amount involved is about Rs.1,95,85,373/- and the penalty was Rs.97,92,687/-, the respondent is directed to pass fresh orders on merits and in accordance with law within a period of 45 days from the date of receipt of a copy of this order. The first date of hearing is fixed on 01.02.2022.

10.The Writ Petition is disposed of in terms of the above observations. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

pgp

To

The State Tax Officer,
Nandambakkam Assessment Circle,
17, Loganathan Nagar, 2nd Street,
Choolaimedu, Chennai 600 094.

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.97
+1cc to the Government Pleader,(Taxes) S.R.No.861

W.P.No.12290 of 2020 and
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GSM(CO)
CT 21/01/2022