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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.27482 of 2021
and
W.M.P.Nos.29000 & 29002 of 2021

Rainbow Stones Private Limited
Sy. No.227/2M1. 297/2A, 296/1A1 & 296/2A1
Nallaganakothapalli Village, Hosur Taluk
Krishnagiri District- 635117
Represented by its Authorized Signatory
V.Edukondalu

...Petitioner

-Vs-

Assistant commissioner (ST),
Hosur (North) II Circle,
Hosur- 635109

...Respondent

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the Respondent in passing the impugned order bearing Ref.No: GSTIN:33AADCR7947K1ZY/2017-18 dated 09.07.2021 and quash the same and direct the Respondent to grant refund in the event of reversal of Input Tax Credit carried forward by filing Form TRAN-1.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records of the Respondent in passing the impugned order bearing Ref.No: GSTIN:33AADCR7947K1ZY/2017-18 dated 09.07.2021 and quash the same and direct the Respondent to grant refund in the event of reversal of Input Tax Credit carried forward by filing Form TRAN-1.



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2. In response to the show cause notice issued in respect of the refund claimed by the petitioner during the erstwhile TNVAT Act regime, the petitioner gave a reply-cum-request on 23.05.2016, wherein he has stated the following.

"We would like to bring to your kind notice that, we are the manufacturer and exporters of Granite Slabs and situated at Hosur North Circle. We are doing most of the sales as export sales only and less sales in domestic, due to that, we are unable to utilize our Input Tax Credit.

Please find enclosed herewith the necessary documents for claiming of Refund for the same for your kind perusal.

- 1) Form W
- 2) Sales tax Monthly Returns (6 Months - October 2015 to March 2016)
- 3) Invoice Copies
- 4) VAT Certificate
- 5) IT Returns

Please consider above documents and request you to issue / credit refund at the earliest."

3. Followed by the same, a reminder had been sent by the petitioner on 30.12.2016. Both the said reply-cum-request as well as the reminder, having been received by the respondent Revenue ie., Assistant commissioner (ST), Hosur (North) II Circle, were not disposed of, without which now the impugned order dated 09.07.2021 has been passed, whereby it is stated that, the petitioner, since is not eligible to get refund as that was under the erstwhile TNVAT regime, the present demand made now has to be paid by the petitioner. Challenging the said order, the present writ petition has been filed with the aforesaid prayer.

4. Mr.Adithya Reddy, learned counsel for the petitioner would point out that, with regard to the refund claim the only impediment according to the Revenue was that, the petitioner did not file Form-W within the time limit. However, when this was brought to the notice of the petitioner by issuance of the show cause notice, the petitioner has given a reply dated 23.05.2016 followed by a reminder dated 30.12.2016, where, what are all the documents to be filed, are filed along with the reply viz., Form-W, Sales Tax Monthly Returns for 6 Months from October 2015 to March 2016), Invoice Copies, VAT Certificate and IT Returns.



5. Having submitted all these documents, when application / request was made for refund , the respondent ought to have decided the same under the TNVAT regime itself. However, in the meanwhile from 01.07.2017, the GST regime has come in. There are transitional provisions under the GST Act especially under Section 142. Under Section 142(3), it is provided that, every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax, interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law.

6. Citing this provision, which has also been quoted in the impugned order by the Revenue, the learned counsel for the petitioner would submit that, under the existing law means TNVAT Act. Therefore, the application of the petitioner shall be disposed of on merits, where the documents annexed along with the application shall be taken into account. However, without disposing the same, the present order has been passed on 09.07.2021 and therefore it shall not stand in the legal scrutiny.

7. Per contra, Mr.V.Prashanth Kiran, learned Government Advocate appearing on behalf of the respondent Revenue would submit that, as per the erstwhile TNVAT Act, Form-W should have been filed within 180 days, beyond which it cannot be accepted. Whether the petitioner has filed Form-W within the said 180 days time or not itself is a question which should be gone into. However, in the meanwhile, the erstwhile TNVAT regime has gone and new GST Act regime has come in from 01.07.2017, the question of considering the refund claim made by the petitioner in the erstwhile TNVAT Act regime does not arise. Moreover, the petitioner is not eligible to get any refund since he has not filed Form-W which was one of the reasons for rejection of refund.

8. Therefore, at this juncture the said application for refund, for which the petitioner is not entitled, cannot be considered within the meaning of Section 142(3) of the Act. Therefore, that has been specifically mentioned in the impugned order and hence the impugned order demanding inadmissible input tax credit with penalty @ 10% under Section 73(9) along with interest at the rate of 24% of the tax due is to be sustained, he contended.

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



10. As has been rightly pointed out by the learned counsel for the petitioner, that on 23.05.2016 a reply-cum-request has been made by way of an application requiring the erstwhile VAT authorities to consider the refund claimed by the petitioner, for which supporting documents have been annexed.

11. The said request having been acknowledged by the concerned Assistant Commissioner on 23.05.2016 itself, followed by the reminder dated 30.12.2016, the same ought to have been considered and decided on merits and disposed of there itself. They waited till the TNVAT regime to come to an end on the introduction of the GST regime from 01.07.2017, before which no orders seems to have been passed by the Revenue for the refund claimed by the petitioner.

12. Even in respect of the applications which were filed and pending before the appointed date ie., 01.07.2017, the same could have been disposed of under the existing law ie., the TNVAT Act, which is possible under the transitional provision viz., Section 142(3) of the GST Act, which in fact has been quoted by the very respondent in the impugned order.

13. When that being so, it is not known as to what was the difficulty of the Revenue to decide such refund claim filed by the petitioner within the meaning of Section 142(3) of the GST Act read with the erstwhile provisions under the TNVAT Act. Without considering the application of the petitioner for refund, the present order of reversal of the alleged inadmissible input tax credit with penalty and interest was made. Therefore, the impugned order cannot be proceeded further and for the above reason, this Court is inclined to dispose of this writ petition with the following order.

- That there shall be a direction to the respondent to consider the application submitted by the petitioner by way of reply dated 23.05.2016 followed by reminder dated 30.12.2016 and in this regard, during the consideration, notice shall be given to the petitioner as well as the Revenue to have a personal hearing and further inputs if any to be supplied by the petitioner and after having verified the documents including Form-W, refund claim of the petitioner shall be disposed of at the earliest. Till such time, the impugned order shall be kept in abeyance.
- It is made clear that, depending upon the outcome of the said application with regard to the refund claim of the petitioner under the erstwhile VAT Act read with Section 142(3) of the GST Act, further



action pursuant to the impugned order can be decided accordingly.

14. With the above directions and observations, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

KST

To

The Assistant commissioner (ST),
Hosur (North) II Circle,
Hosur- 635109.

+1cc to the Special Government Pleader(Taxes), S.R.No.15953

W.P.No. 27482 of 2021

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NSK 01/04/2022