BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **11.02.2022**
CORAM:
THE HONOURABLE MR.JUSTICE **C.SARAVANAN**
W.P.(MD) No.2814 of 2022
and
W.M.P.(MD) No.2475 of 2022

M/s.Sri M.S.P.Velayutha Nadar,
represented by its Partner Rajesh Sankara Kumar,
No.10/709, Main Road,
Pavoorchatram 627 808,
Tenkasi District. ... Petitioner

/vs./

The Assistant Commissioner (ST) (FAC),
Tenkasi. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for records pertaining to the impugned proceedings passed by the Respondent in TIN:33285680597/2016-17 dated 29.12.2021 and quash the same as it is unlawful and gross violation of the Principles of Natural Justice and further direct the respondent to consider the reply dated 01.09.2021 along with corrected Audit Report in Form WW after providing an opportunity for personal hearing as per the Provisions of the Act.

For Petitioner : Mr.R.D.Ganesan

For Respondent : Mr.S.Shaji Bino
Special Government Pleader

ORDER

The writ petition has been filed for a Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings passed by the respondent in TIN:33285680597/2016-17 dated 29.12.2021 and quash the same as it is unlawful and gross violation of the principles of natural justice and further direct the respondent to consider the reply dated 01.09.2021 along with corrected Audit Report in Form WW after providing an opportunity of personal hearing.

2.Though it is a specific case of the petitioner that the petitioner has not received notice dated 17.12.2021, fixing the personal hearing, it is noticed that the petitioner was earlier issued with notice dated 29.06.2020 based on the scrutiny of Form WW filed by the petitioner under Section 63 (A) of the Tamil Nadu Value Added Tax Act, 2006. As per the aforesaid notice, the petitioner was called upon to reverse a sum of Rs.64,837/-. Form WW filed by the petitioner itself states that the petitioner was required to reverse the aforesaid sum together with interest. However, on receipt of the notice dated 29.06.2020, the petitioner appears to have received another letter dated 03.07.2020, in response to which, the petitioner has replied on 01.09.2021, which has been duly acknowledged by the respondent on 01.09.2021. Along with the letter dated 01.09.2021, the petitioner has enclosed a fresh copy of the Form WW for the period ending 31.03.2017, wherein it is stated a mistake was committed while filing Form WW earlier and the same was rectified and it was therefore stated that the petitioner was not required to reverse the input tax.

3.The Chartered Accountant, who prepared form WW, has also certified the same in his certificate dated 08.02.2022. The Chartered Accountant has pointed out the mistake committed earlier. The relevant portion from the aforesaid certificate reads as under:-

"TO WHOM SO EVER IT MAY CONCERN

We had originally filed Audit Report in Form WW pertaining to M/s.Sri.M.S.P.Velayutha Nadar at No.10/709, Main Road, Pavvorchatram having registration TIN No.33285680597 for the assessment year 2016-2017 under Section 63-A of the TNVAT Act, wherein the Remark Column it has been mistakenly mentioned as the dealer was advised to reverse Input Tax Credit of Rs.64,837/-. Thereafter, when it was pointed by the dealer, we have issued fresh Form WW rectifying the same after due verification of their accounts and it is clearly confirmed that there is no amount liable for reversal of ITC as per the provisions of the Act in their account relating to the assessment year 2016-2017.

Place: Kovilpatti
Date: 08.02.2022 *CHARTERED ACCOUNTANT*
Sd/- "

4.The Chartered Accountant has himself certified that there was a mistake in the Form WW filed earlier. The petitioner thus appears to have made out a case for interference under Article 226 of the Constitution of India, particularly in the light of the fact that the notice preceding the order passed by the respondent was not received by the petitioner. Ultimately, the issue has to be examined afresh in the light of the revised copy of Form WW by the petitioner on 01.09.2021 along with the certificate of the Chartered Accountant enclosed by the petitioner at the time of filing of the writ petition dated 08.02.2022.

5.In view of the above, the writ petition is allowed and the impugned order passed by the respondent in TIN:33285680597/2016-17 dated 29.12.2021 stands quashed and the case is remitted back to the respondent to pass appropriate orders to scrutinize the revised copy of Form WW and the Chartered Accountant's Certificate dated 08.02.2022. This exercise shall be carried out by the respondent within a period of 6 weeks from the date of receipt of a copy of this order. The petitioner shall also be heard subject to such protocols as may be imposed on account of the outbreak of COVID-19 pandemic. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl side)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mm

To

The Assistant Commissioner (ST) (FAC),
Tenkasi.

+1 CC to M/s.SPL GP (SR-6000[F] dated 14/02/2022)

+1 CC to M/s.R.D.GANESAN, Advocate (SR-5523[F] dated 11/02/2022)

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