BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P(MD).No.4120 of 2022
and
W.M.P.(MD).No.3547 of 2022

Tvl. Ashok Trading Company,
Rep. by its Partner,
Mr.Mahendra N Patel,
No.25/1B-3 Tanjore Main Road,
Near Thuvakudi Toll Plaza,
Asoor Post, Trichy 620 015. ... Petitioner

Vs.

The State Tax Officer,
Inspection Cell-III,
Trichy. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in GSTIN:33AAIFA8191NIZO/2017-2018 and quash the proceedings, dated 22.02.2021 as it is found incorrect, invalid and not in accordance with the provisions of the Act and further direct the respondent to pass an appropriate order after adjusting the eligible ITC available in Form GSTR-3B of the return filed for the month of March 2018.

For Petitioner : Mr.R.D.Ganesan
For Respondent : Mr.J.K.Jayaselan,
Government Advocate.

ORDER

The writ petition has been filed for a writ of Certioriarifed Mandamus calling for the records of the respondent in GSTIN:33AAIFA8191NIZO/2017-2018 and quash the proceedings, dated 22.02.2021 as it is allegedly found incorrect, invalid and not in accordance with the provisions of the Act and further direct the respondent to pass an appropriate order after adjusting the eligible ITC available in Form GSTR-3B of the return filed for the month of March 2018.

2. The petitioner claims that it had earned input tax credit on Integrated Tax, Central Tax and State/UT Tax of Rs.52,25,897.26/- (Rs.6,10,601.94+Rs.23,07,647.66+Rs.23,07,647.66)

3. It is submitted that the above credit was available for being set off against the respective tax liability of Rs.52,32,258.78/- (Rs.6,104.16+Rs.26,13,077.31+Rs.26,13,077)

4. The learned counsel for the petitioner submits that returns were filed in accordance with the provisions of the respective Goods and Services Tax Act, 2017 and respective Goods and Services Tax Rules. It is submitted that the system did not permit the peititoner to set off aforesaid credit of Rs.52,25,897.26/- (Rs.6,10,601.94+Rs.23,07,647.66+Rs.23,07,647.66) against tax liability of Rs.52,32,258.78/- (Rs.6,104.16+Rs.26,13,077.31+Rs.26,13,077). The learned counsel for the petitioner further submits that the petitioner had sent several representations to the help desk to rectify the mistake. It is submitted that the input tax credit of Rs.52,25,897.26/- (Rs.6,10,601.94+Rs.23,07,647.66+Rs.23,07,647.66) was not reflected in returns filed in GSTR-3B though it was reflected in other returns. The learned counsel for the petitioner submits that without considering the difficulties faced by the petitioner in the system, the respondents proceeded to manually issue a pre-assessment notice and revised notice, dated 26.12.2020 and 29.01.2021 respectively to which, the petitioner has also replied. It is submitted that the impugned order however demanded a sum of Rs.52,35,236/- (Rs.9,082+Rs.26,13,077+Rs.26,13,077) towards Integrated Goods and Service Tax, Central Goods and Services Tax and State Goods and Services Tax even though the petitioner had a total input credit of Rs.52,25,897.26/- (Rs.6,10,601.94+Rs.23,07,647.66+Rs.23,07,647.66). It is therefore submitted that the impugned order passed by the respondents is without jurisdiction and without considering the fact that the petitioner is entitled to set off the input tax credit reflected in Form GSTR-3B against the total tax liability of Rs.52,32,258.78/- (Rs.6,104.16+Rs.26,13,077.31+Rs.26,13,077).

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

6. The impugned order clearly states that the petitioner has an alternate remedy before the Deputy Commissioner, Goods and Service Tax. This writ petition appears to have been filed with a view to avoid pre-deposit, while filing a statutory appeal before the Appellate authority under the provisions of the respective Goods and Service Tax Act. The pre-assessment notice, dated 29.01.2021, clearly states that the petitioner is not entitled to avail input tax credit of Rs.80,02,152/- (Rs.9,14,124+Rs.35,44,014+Rs.35,44,014) towards Integrated Goods and Service Tax, Central Goods and Services

Tax and State Goods and Services Tax for being set off against a total liability of Rs.71,79,94,918/- as the petitioner failed to produce the documents to substantiate inward supplies. In reply dated 04.02.2021, the petitioner has merely stated excess Goods and Services Tax of Rs.3,03,516 was claimed. There are no records to substantiate the case. There are several disputed question of facts. *Prima facie*, I do not find any merits in the submission made by the learned counsel for the petitioner inasmuch as the notice was issued to the petitioner, namely, the pre-assessment notice and revision notice which seems to indicate that the petitioner had no documents to substantiate a valid availing of input tax credit. Mere reflection of the amounts in the Goods and Service Tax records electronically is not sufficient. If credit is to be allowed and adjusted on such transactions, it would lead to unintended benefits being conferred. In any event, it is noted that the impugned order was been passed on 22.02.2021. The petitioner has approached this Court long after the expiry of the limitation prescribed under the act to challenge the impugned order. The writ petition has been filed with a view to get over.

7. Considering the fact that the petitioner has an alternate remedy which has been deliberately not exercised by the petitioner and I am still inclined to dismiss this writ petition with liberty to the petitioner to work out appropriate remedy before the Deputy Commissioner, Goods and Service Tax. If the petitioner filed such appeal within a period of thirty days from the date of receipt of copy of this order, the Deputy Commissioner (Goods and Service Tax Appeal) shall consider the appeal and pass appropriate orders on merits and in accordance with law.

8. The writ petition stands dismissed with the above observations. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Writ)

/TRUE COPY/

/ /2022
Sub Assistant Registrar(CS)

sn
To
The State Tax Officer,
Inspection Cell-III, Trichy.
Copy To:
The Deputy Commissioner, Goods and Service Tax, Trichy

+1 CC to M/s.R.D.GANESAN, Advocate (SR-10551[F] dated 08/03/2022)
+1 CC to M/s.SPL.GP (SR-10987[F] dated 09/03/2022)

W.P(MD).No.4120 of 2022
08.03.2022

MK/22.03.2022/3P/5C