BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.14172 of 2020
and
W.M.P(MD).No.11832 of 2020

Tvl.Nakoda Agencies,
Represented by its Proprietor,
G.Pawan Kumar

: Petitioner

Vs

1. The Commissioner of Commercial Taxes,
O/o. the Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2. The Assistant Commissioner (CT),
Rockfort Assessment Circle,
Commercial Taxes Complex,
Contonement,
Trichy-620 001.

: Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the 2nd Respondent in TIN/33223581453/2011-12 dated 31.07.2020 and quash the same.

For Petitioner : Mr.B.Rooban
For R1 & R2 : Mr.M.Ramesh
Government Advocate

ORDER

This petition had been filed challenging the impugned order, dated 31.07.2020. The impugned order of assessment for the years 2011-2012 is challenged on the ground that the petitioner was required to reverse ITC of Rs.2,13,585/-, which is clearly arbitrary and contrary to the facts on the material on record.

2.The learned Counsel appearing for the Petitioner submitted that despite the fact that they had submitted their objections on 17.03.2017 and again on 24.07.2017, wherein, they had clearly stated that no input tax credit was even availed of by the petitioner and thus the question of reversal of credit may not arise. However the same was not even dealt with in the assessment orders. The relevant portion of the objection is extracted below:

> *'2.We, further, submit that as we are effecting second and subsequent salres, after 12.07.2011, we do not collect any tax on salres. We claim exemption on this turnover. In view of this, we do not claim any Input Tax Credit, involved in the purchases of these Goods, if purchased from first sellers. Therefore, reversal of Input Tax Credit is not warranted. if it is done, it would amount to double taxation and also revised Return for the Month of September 2011 submitted on 08/11/2011 i.e., included the omitted Exempted Purchase Turnover Rs.14,73,000.00/-. We enclose herewith the proof of Delivery Notice.*
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> *3.It has been also proposed to levy penalty. As we did not claim any Input Tax Credit, in respect of this commodity, no reversal is warranted. In such*

circumstances, they levy of penalty is also not warranted.

4.In the case of Madras Granites (P) Ltd., V. Commercial Tax Officer, Arisipalayam Circle, Salem, reported in (2006) 146 STC P.642, the Hon'ble High Court of Madras has set aside the order, holding that the Assessing Officer has acted on the basis of directions from higher authorities of Enforcement Wing. Therefore, we request your good-self to kindly consider all my above contentions sympathetically and judiciously, drop the proposal, and render justice. If it is instructed, we shall produce all the original documents and the records, even all out Accounts, required for dropping of the proposal.'

3.It is the submission that the impugned orders are made confirming the proposal to reverse the credit only on the basis that the petitioner had allegedly accepted the claiming of the above Input Tax Credit before the Enforcement Directorate Officials and therefore, it was not open to them to contend to the contrary. There is no discussion on the objection raised by the Petitioner herein to the Input Tax Credit, which is sought to be reversed was never even availed for the question of reversal of Input Tax Credit Rs. 2,13,585/- to even arise.

4.The impugned order is made by the second respondent without even applying the mind to the objection. This Court is inclined to remit the matter back to the authorities concerned for examining the claim of the petitioner afresh, after providing reasonable opportunities to the Petitioner of being heard and pass orders thereafter in accordance with law.

5.With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

29.11.2022

Index : Yes / No
Internet : Yes/ No
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To

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MOHAMMED SHAFFIQ, J.

lr

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