IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.01.2023**

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.289 of 2023
and W.M.P.No.279 of 2023

Maheswaran, Proprietor,
D.R.Trader,
No.11/15 A, Saraswathi Nagar,
12th Street, Thiruvottiyur,
Chennai – 600 019. .. Petitioner

Vs

1.The Assistant Commissioner (Circle),
Manali : Zone – III,
Chennai North.

2.The Assistant Commissioner (ST) (FAC),
Thiruvottiyur Assessment Circle, Vepery,
Chennai – 600 003. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the 1st respondent's summary order dated 31.08.2021 bearing Reference No.ZD330821003607P and 2nd respondent's consequential urgent notice dated 27.09.2022 bearing Reference No. GSTIN:33ALLPM9596R1ZU and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.V.Prashanth Kiran
Government Advocate(Taxes)

ORDER

In the captioned writ petition, Mr.Adithya Reddy, learned counsel for writ petitioner and Mr.V.Prashanth Kiran, learned Government Advocate (Taxes) who accepted notice on behalf of both the respondents are before this Court.

2. Owing to the extremely acute angle in which the point on which captioned writ petition is predicated turns i.e., narrow compass, the main writ petition was taken up with the consent of learned counsel on both sides.

3. Short facts are that the matter arises under Tamil Nadu Goods and Services Tax Act, 2017 ('TN-G&ST Act' for the sake of brevity, convenience and clarity); that ITC (Input Tax Credit) to the credit of the writ petitioner was sought to be reversed by the first respondent on the alleged ground that the writ petitioner engaged in mere bill trading with fictitious supplier; that it may not be necessary to delve further into this aspect of the matter as would be evident from the discussion and dispositive reasoning infra; that it will suffice to say that an order dated 31.08.2021 bearing Reg.No.ZD330821003607P making a demand *inter alia* by resorting

to Section 74 of TN-G&ST Act has been called in question; that primary ground is that the demand has been made without making an order.

4. Learned Revenue counsel on instructions submits that the order preceding the impugned demand had already been made on 16.08.2021 and the same was uploaded in the official portal along with 31.08.2021 demand which is captioned summary of the order. There is some disputation/contestation on this aspect of the matter. Therefore, the matter was passed over enabling learned counsel on both sides to go into the portal using credentials of the writ petitioner to ascertain if the 16.08.2021 order had actually been uploaded along with 31.08.2021 summary of the order. After undertaking this exercise, both the learned counsel fairly submitted that while 31.08.2021 summary of the order has been uploaded, there appears to be some glitch with regard to 16.08.2021 order. While learned Revenue counsel submits that it is the first page of 16.08.2021 order, learned counsel for writ petitioner disputes the same but it is not necessary to adjudicate upon this disputation in the case on hand as it is evident that the 16.08.2021 order has not been uploaded which means that the 16.08.2021 order has not been served on the writ petitioner until

this day.

5. All the rights and contentions of both sides are left open for being canvassed in further proceedings if the writ petitioner chooses to assail the 16.08.2021 order in a manner known to law.

6. Before writing the conclusive paragraph of this order, this Court deems it appropriate to scan and reproduce copy of 16.08.2021 order bearing Ref. No.GSTIN:33ALLPM9596R1ZU/2019-20 which has been served by the learned Revenue counsel on the counsel for the writ petitioner.

PROCEEDINGS OF THE ASSISTANT COMMISSIONER(ST), MANALI ASSESSMENT CIRCLE, CHENNAI-3

PRESENT:S. VALLI,
STATION: NO.32, ELEPHANT GATE BRIDGE ROAD, CHENNAI 600003

GSTIN: 33ALLPM9596R1ZU/2019-20 **Dated:16.08.2021**

Sub:-		T.N.G.S.T. Act 2017 – Blocking of Credits under Rule 86-A of the TNGST Rules, 2017 – Tvl. D.R.TRADERS, Chennai-63(GSTIN: 33ALLPM9596R1ZU) inward supplies from non-existent tax payer – Corresponding ITC from the inward supplies 2019-20 initiated under Section 74 of the TNGST Act 2017 – Order passed – regarding.
Ref:	1.	This office notice of intimation GSTIN: 33ALLPM9596R1ZU/2019-20 dt.29.06.2020 And 24.08.2020
	2.	Dealer reply filed on 9.07.2021, 27.08.2020, 7.10.2020, 13.10.2020
	3.	GST DRC-01A issued on 30.06.2021 and Final Show cause notice issued on 19.07.2021
	4.	GST DRC 01 issued on 20.07.2021
	5.	Dealer reply filed on 4.8.2021

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Note: An appeal against this order lies before the Deputy Commissioner (ST), GST Appeals, Chennai-I within 90 days from the date of receipt of this order

ORDER:-

Tvl. D.R.TRADERS, doing business at No. No 132 Manali Express Road, Chennai-57 is a registered dealer in this assessment circle. They have been issued a show cause notice proposing to disallow Input Tax Credit of Rs.1,39,00,139.5 claimed on the purchases effected from the following suppliers for the reason that the said suppliers were non-existent in their place of business as per the field inspection report received from the Central Authorities attached to Central Board of Indirect Taxes & Customs and addressed to the Commissioner of Commercial Taxes and thus, the dealer in this assessment circle was requested to file their detailed objections with documentary evidence, if any with respect for the proposed disallowance of input tax credit.

Sl.No	GSTIN & Name of Supplier of other end	Year in which Inward supplies effected	ITC Involved	CGST	SGST
1	P.LAKSHMAN [illegible]	2019-2020	[illegible]	[illegible]	[illegible]
2	[illegible]	2019-2020	[illegible]	[illegible]	[illegible]
3	[illegible]	2019-2020	[illegible]	[illegible]	[illegible]

4	[illegible]	2019-2020	[illegible]	[illegible]	[illegible]
5	[illegible]	2019-2020	1072993	536496.5	536496.5
6	[illegible]	2019-2020	121500	60750	60750
7	[illegible]	2019-2020	718495	359248	359248
8	[illegible]	2019-2020	[illegible]	[illegible]	[illegible]
9	[illegible]	2019-2020	2051402	1025701	1025701
10	[illegible]	2019-2020	585622	292811	292811
11	[illegible]	2019-2020	[illegible]	2079662	2079662
12	[illegible]	2019-2020	[illegible]	[illegible]	[illegible]
13	[illegible]	2019-2020	[illegible]	[illegible]	[illegible]
14	[illegible]	2019-2020	[illegible]	[illegible]	[illegible]
15	[illegible]	2019-2020	25834	12917	12917
16	[illegible]	2019-2020	110345	55172.5	55172.5
17	[illegible]	2019-2020	[illegible]	[illegible]	[illegible]
18	[illegible]	2019-2020	[illegible]	[illegible]	[illegible]
19	[illegible]	2019-2020	[illegible]	[illegible]	[illegible]
20	[illegible]	2020-2021	[illegible]	[illegible]	[illegible]
21	[illegible]	2020-2021	[illegible]	[illegible]	[illegible]
		Total	[illegible]	[illegible]	[illegible]

Notice of intimation under rule 86, A(1)(a) and (c) of the TNGST Rules 2017 was issued to the dealer on 03.09.2020 through their e-mail id which has been furnished by the dealer in their registration profile. For which the dealer filed reply and produced documents on 9.07.2021, 27.08.2020, 7.10.2020, 13.10.2020. In those circumstances, in order to render natural justice final notice with DRC-01 A was sent to the dealers registered place of business on 30.06.2021 and DRC 01 issued on 26.07.2021 by the registered post with acknowledgment due and the dealers were requested to file their objection, if any, to the notice with supporting documents to substantiate their case, within 15 days from the date of receipt of the notice and personal hearing was also granted. And later the dealer filed objection on 4.8.2021. They have failed to prove the genuineness of the transactions. Further scrutiny of the 3-B returns filed by the tax payer, they have paid tax less than 2%.

It is pertinent to note herein that the dealer is entitled to avail input tax credit by virtue of section 16(2) of TNGST Act 2017, subject to the following conditions.

"16(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed,

(b) he has received the goods or services or both
[Explanation. - For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services
(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
(ii) Where the services are provided by the supplier to any person on the direction and on account of such registered person.]
(c) subject to the provisions of Section 41 or Section 43A, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply, and
(d) he has furnished the return under section 39
.................."

In the case on hand, the afore said suppliers are not existent in the place of businesses and the input tax credit claimed by the beneficiary-dealer of this circle on the basis of strength of invoices received from non-existent suppliers without actual receipt of goods is not eligible for admissibility in view of section 16(2)(b) and further, the same is also not eligible for admissibility in view of section 16(2)(c) since the tax collected by the non-existent suppliers from this circle's beneficiary dealer has not been actually paid into the Government Exchequer.

In these circumstances, the undersigned hereby disallows the ineligible claim of input tax credit of Rs.1,35,93,195/- on the purchases stated to have been effected from non-existent dealers, more so particularly in view of the same having been not remitted into the Government Exchequer as contemplated in section 16(2)(c) of TNGST Act, 2017 in order to deny undue enrichment of input tax credit in the hands of this circle's beneficiary dealer.

In addition, a penalty equivalent to the disallowance of input tax credit as envisaged in section 74 of TNGST Act, 2017 is levied and interest at the rate of 24% as envisaged in section 50 of TNGST Act, 2017 is also liable to be paid from the date of undue claim of input tax credit to the date of actual payment of the excessly disallowed input tax credit amount mentioned herein.

Value of Inward Supplies	Details	SGST (Rs.) 9%	CGST (Rs.) 9%	Interest SGST (Rs.)	Interest CGST (Rs.)	Penalty SGST (Rs.)	Penalty CGST (Rs.)	Total (Rs.)
[illegible]	Due	6950069.8	6950069.8	2298554	[illegible]	6950069.8	6950069.8	[illegible]
	Paid	Nil	Nil	Nil	Nil	Nil	Nil	Nil
	Balance	6950069.8	6950069.8	[illegible]	[illegible]	6950069.8	6950069.8	[illegible]

DRC 07 will be issued seperately to the taxable person.

ASSISSTANT COMMISSIONER(ST),
MANALI ASSESSMENT CIRCLE.

To
The dealers
Copy submitted to Joint Commissioner (ST), Chennai (North) Division
Copy submitted to the Deputy Commissioner (ST), Zone I
Copy to File

7. Owing to this undisputed position, the following order is made:

> (i) *A photocopy (hard copy) of the 16.08.2021 order has been furnished by the learned Revenue counsel to the learned counsel for writ petitioner today and therefore today (06.01.2023) shall be the reckoning date for all purposes more particularly for computing limitation if the writ petitioner wants to assail this order.*

(ii) If the writ petitioner assails this order in any manner permissible in law 06.01.2023 shall be taken as the date of service of order on the writ petitioner.

(iii) 31.08.2021 order has been followed by a notice captioned urgent notice (dated 27.09.2022) bearing Ref. No.GSTIN:33ALLPM9596R1ZU. This is a notice under Section 78 of TN-G&ST Act. This notice has to obviously perish as the 16.08.2021 order has been served on the writ petitioner only today and the 31.08.2021 order cannot precede the same. Therefore, this 27.09.2022 notice captioned urgent notice bearing Ref. No.GSTIN:33ALLPM9596R1ZU is set aside.

8. Captioned writ petition is disposed of in the aforesaid manner. Consequently, captioned WMP is disposed of as closed. There shall be no order as to costs.

06.01.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

1.The Assistant Commissioner (Circle),
Manali : Zone – III,
Chennai North.

2.The Assistant Commissioner (ST) (FAC),
Thiruvottiyur Assessment Circle, Vepery,
Chennai – 600 003.

M.SUNDAR,J.,

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W.P.No.289 of 2023

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