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W.P.No.6780 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.6780 of 2020
and W.M.P.No.8073 of 2020

M/s.Jai Balaji Paper Cones
Represented by its Proprietor
Sabarishwaran

... Petitioner

Vs

1.The Assistant Commissioner,
Sales Tax, Tiruchengode.

2.Raghava Industries
Rep.by Proprietor Podili Suneel
Plot No.3, Industrial Estate,
Yerrabalem, Mangalagiri,
Guntur District,
Andhra Pradesh 522 503.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for forbearing the 1st respondent from causing the ITC reversal on the petitioner under his GSTIN/UIN 33BHPS1120P129 in respect of his Machinery purchase from the 2nd respondent as referred in the schedule.



WEB COPY



W.P.No.6780 of 2020

For Petitioner : Mr.AR.M.Arunachalam

For R1 : Mrs.K.Vasanthamala
Government Advocate

For R2 : No Appearance

ORDER

The petitioner appears to have purchased a consignment of goods from the second respondent, from Gundur District, Andhra Pradesh vide three invoices dated 23.11.2018. The petitioner appears to have paid the amount to the second respondent's. However, GST registration of the second respondent was earlier cancelled on 31.10.2018.

2. The case of the petitioner is that the petitioner has paid an amount of Rs.4,14,000/- to the second respondent by including the GST payable of Rs.4,14,000/- on three invoices. It is therefore submitted that since the petitioner has paid the tax due on these three invoices dated 23.11.2018 to the second respondent, the petitioner cannot be asked to pay IGST.



W.P.No.6780 of 2020

3. The learned counsel for the first respondent submits that the petitioner is not entitled for the relief in view of Section 16(2)(c) of the Central Goods and Service Tax Act, 2017 r/w Rule 36(4).

4. I have considered the learned counsel for the petitioner and the learned Government Advocate for the first respondent.

5. Section 16(2) (c) of the Central Goods and Service Tax, reads as follows:-

“16(2)(c) : Subject to the provisions of Section 41, 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”.

6. Thus, a registered person is not entitled to credit of input tax in respect of any supply of goods or services of both if tax is not paid to the Government. The registration of the second respondent has been cancelled on 31.10.2018 before three invoices dated 23.11.2018 were raised. Thus, it is clear that the second respondent could not have paid the tax to the ex-chequer.

C.SARAVANAN,J.



W.P.No.6780 of 2020

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Therefore, there cannot be a mandamus to the first respondent contrary to the provisions of the respective GST Act of 2017 and the Rules made thereunder. Therefore, there is no merits in the present writ petition. The petitioner is however entitled to recover the amount from the suppliers in the manner known to law.

7. The present writ petition stands dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

03.07.2023

Index : Yes/No

Internet : Yes/No

kkd

To

The Assistant Commissioner,
Sales Tax, Tiruchengode.

W.P.No.6780 of 2020