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W.P.No.8509 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2023

CORAM

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.8509 of 2020

M/s.P & C Projects Private Ltd.,
Rep. by its Chairman,
Mr.S.P.Chinnasamy,
P&C Towers II Floor,
No.140, Perundurai Road,
Erode - 638 011.

... Petitioner

Vs.

The Assistant Commissioner (ST)(FAC),
Brough Road Assessment Circle,
No.161, Brough Road,
Erode - 638 001.

... Respondent

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records in order Ref. No.220303200091572 dated 21.05.2020 in GSTIN:33AABCP2483LIZB on the file of the respondent and quash the same as illegal, arbitrary and violative of principle of natural justice and consequently direct the respondent to allow the TDS amount paid as eligible credit of Rs.5,42,19,976/- as tax paid on inputs.



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For Petitioner : Mr.P.Jayalakshmi
for Mr.S.Muthuvenkatraman

For Respondent : Mr.K.Vasantha mala
Government Advocate

ORDER

The only issue that arises for consideration in this Writ Petition is whether the respondent was right in rejecting the petitioner's request under Section 140(1) of the GST Act, 2017 for carrying forward the accumulated credit under the TNVAT Act in respect of TDS.

2. Under the impugned order, the respondent has rejected the petitioner's request for carrying forward of unutilized VAT TDS to the new GST regime without giving any reason.

3. A learned Single Judge of this Court in the case of ***M/s.DMR Constructions Vs. Assistant Commissioner, Commercial Tax Department, Rasipuram, Namakkal District*** reported in ***2021 (4) TMI 261 - Madras High Court*** has elaborately dealt with this issue. In the said batch of Writ Petitions also, the very same issue was involved and the respondents had denied the carrying forward of accumulated credit in respect of TDS during



the TNVAT regime.

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4. The learned Single Judge has referred to various decisions rendered by the Honourable Supreme Court as well as by this Court and has given the following findings which are of relevance to the case on hand. They are extracted hereunder:

" 23. In Gujarat Fluoro Chemicals the point that arose was what the character of TDS or advance tax would be under the Income Tax Act and whether interest would be payable by the revenue, if excess advance tax had been paid by an assessee or if excess tax had been deducted at source when compared with the assessed tax. Thus the Court was faced with the question of whether the assessee is not entitled to interest for any such excess paid or deducted.

24. There is a distinction between the Income Tax Act and the Sales Tax Act insofar as the concept of carry forward of credit does not form part of the scheme of the IT Act. Under the IT Act, an amount paid as advance tax or amount deducted as tax will have limited use only qua the relevant assessment year. Advance tax is paid in four instalments, spread over the



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previous year relevant to an assessment year. Tax is deducted at source in regard to those transactions that have transpired during the financial year relevant to an assessment year. Such advance tax and TDS will be set off while computing the income relevant for that assessment year only and a refund of excess advance tax paid or a refund of excess tax deducted/collected at source will be determined in that assessment year itself. The Sales Tax enactments also provide for a refund upon completion of assessment that is issued in Form P. A RAO, on the other hand, is not a statutorily sanctioned document and no provision or Rule is brought to my notice in support thereof.

25. Form P determines the refund after adjusting the monthly payments made towards the final tax liability. This has no bearing on the scheme of tax credit in vogue under the Sales Tax Act that provides for carry forward of credit from year to year, such carry forward and accumulated credit automatically reflected in the account of the assessee with the department and automatically set off against output tax liability.



26. *The observations of the Supreme Court to the effect that advance tax and TDS under the provisions of the Income tax Act do not carry interest as they do not bear the character of tax, are not applicable to the issue in discussion now.*

27. *The argument that at the time of deduction, the amount (for want of a better word) is 'deposit', when adjusted, it assumes the nature of 'tax', when carried forward, it bears the character of 'credit' and when refunded, it bears the character of an 'amount' would result in a distorted and imbalanced interpretation of the provisions of the Act and scheme set out thereunder.*

28. *I am thus of the view that any deduction made towards anticipated tax liability would assume the character of tax and will not change or fluctuate depending on whether it is held as credit or whether it is an adjustment against tax liability. To attribute such fluctuating character to an amount would distort the scheme of taxation and cause much difficulty in the interpretation on the various ancillary provisions. The interpretation of the provision must be such that it lends itself to certainty in its conclusion.*



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31. Section 140 of the Act talks of carrying forward of the credit of 'VAT' and Entry Tax under the existing law, defined under Section 2(48) of the TNGST Act to mean any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services made prior to the commencement of the TNGST. Since the amount collected/deducted has been captured in the returns of turnover filed under the erstwhile TNVAT regime, I accept the stand of the petitioners to the effect that such amounts would stand included for the purposes of transition under Section 140.

32. My conclusion also finds support from the language of Section 20 of the TNVAT Act dealing with assessment of tax, as per which, tax under that Act was to be assessed, levied or collected in the manner prescribed, bringing within the ambit of assessment, collection by way of deduction under Section 13 of that Act.

33. In *Magma Fincorp Ltd. V. State of Telangana* (2019 (26 GSTL 7) the High Court at Telangana has considered this very issue, interpreting



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Section 140 purposively stating that 'Once it is admitted that credit was available to the petitioner on the date of switch over from VAT regime to GST regime and once it is admitted that the petitioner may be entitled to make a claim for this credit in other modes, we think that the second respondent ought to have given a purposive interpretation to Section 140 of the Act read with Sections 16 to 21 of the Telangana GST Act 2017. As he has failed to do the same, the matter requires reconsideration'. Section 140 of the Telangana Goods and Service Tax Act, 2017 is in pari materia with the same provision in the TNGST and the observations of the Telangana High Court would also support the view I have now taken."

5. This Court after careful consideration of the Judgment rendered by another learned Single Judge referred to supra, is in agreement with the said view and the findings given therein.

6. For the foregoing reasons, this Court is of the considered view that being a non-speaking order as no reasons have been given for rejecting the petitioner's request for carrying forward of the unadjusted VAT TDS to the GST regime that too when the law has been well settled now by the decision



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of the learned Single Judge referred to supra, which has attained finality as no Appeal has been filed against the said order as fairly admitted by the learned Government Advocate appearing for the respondents, the impugned order will have to be necessarily quashed and the Writ Petition will have to be allowed. Accordingly, the impugned order is hereby quashed and the Writ Petition is allowed and the petitioner is entitled to transition TDS under the TNVAT Act in terms of Section 140 of the TNGST Act, 2017. No Costs.

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Index : Yes/No
Speaking Order : Yes / No
Neutral Citation Case: Yes / No
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ABDUL QUDDHOSE. J.,

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