**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated: 11.04.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

**W.P.No.11002 of 2023 and**
**WMP.Nos.10893 & 10894 of 2023**

D.Ranganathan & Co.,
Represented by its Proprietor D.Ranganaathan,
SF.No.64 A2D, Chennimaaigoundanvalasu,
Alambadi Post,
Kangeyam-638 701. ... Petitioner

Vs

1.The Assistant Commissioner (RAL)(FAC),
Office of the Deputy Commissioner (ST),
Karur.

2.State Tax Officer (ST),
Kangeyam Assessment Circle,
Kangeyam.

3.Assistant Commissioner (ST),
Kangeyam Assessment Circle,
Kangeyam.

4.State Tax Officer,
Inspection VI,
Erode Division, Intelligence wing,
Erode. ... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari to call for the records on the files of the third respondent in GSTIN 33AXAPR5397N1ZT/2017-18 dated 05.01.2023 and quash the same as being without its jurisdiction and authority of law and contrary to the principles of natural justice.

| | |
|---|---|
| For Petitioner | : Mr.R.Senniappan |
| For Respondents | : Mr.C.Harsha Raj<br>Additional Government Pleader |

**O R D E R**

The petitioner is a proprietor and a dealer under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017. In respect of the period 2017-18, the petitioner's bank account had been blocked under Rule 86A of the Tamil Nadu Goods and Services Tax Rules, 2017 (in short 'Rules').

2.The petitioner had made a representation for unblocking of the account. This representation was taken up for consideration by the Assistant Commissioner (RAL)(FAC). A notice was issued on 15.04.2021. The petitioner was informed that Input Tax Credit (ITC) had been availed allegedly, fraudulently and hence there was a liability both for CGST and SGST.

3.The petitioner was called upon to file objections and was also heard. Pursuant thereto, an order was passed on 16.07.2021, considering the request of the petitioner for unblocking of credit under Rule 86A in its favour.

4.Rule 86A reads thus:

> *'[86A. Conditions of use of amount available in electronic credit ledger*
>
> *(1) The Commissioner or an officer authorised by him in this behalf, not below the rank of an Assistant Commissioner, having reasons to believe that credit of input tax available in the electronic credit ledger has been fraudulently availed or is ineligible inasmuch as.-*
>
> *(a) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36-.*
>
> *(i) issued by a registered person who has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or*
>
> *(ii) without receipt of goods or services or both; or*
>
> *(b) the credit of input tax has been availed on the strength of tax invoices or debit notes or any other document prescribed under rule 36 in respect of any supply, the tax charged in respect of which has not been paid to the Government; or*
>
> *(c) the registered person availing the credit of input tax has been found non-existent or not to be conducting any business from any place for which registration has been obtained; or*
>
> *(d) the registered person availing any credit of input tax is not in possession of a tax invoice or debit note or any other document prescribed under rule 36,*
>
> *may, for reasons to be recorded in writing, not allow debit of an amount equivalent to such credit in electronic credit ledger for*

*discharge of any liability under section 49 or for claim of any refund of any unutilized amount.*

*(2) The Commissioner, or the officer authorized by him under sub-rule (1) may, upon being satisfied that conditions for disallowing debit of electronic credit ledger as above, no longer exist, allow such debit.*

*(3) Such restriction shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction.]'*

5.While passing an order lifting the blocking of credit, the assessing authority is undoubtedly required to examine whether such block has been validly made and Sub-Rule 2 states that the Commissioner or an officer authorised by him may lift the block, upon being satisfied that the conditions for disallowing the debit of Electronic Credit Ledger (ECL) no longer exist.

6.It is thus incumbent upon the officer concerned to examine every aspect of the matter prior to arriving at a proper decision. In the present case, R1 who passed the order dated 16.07.2021 was satisfied with the explanation putforth before him.

7.R1 had proceeded to consider the bank statements that were furnished by the petitioner and also undertook the exercise of comparing the particulars contained in the bank statements with the GSTR-1, GSTR-2A and GSTR-3B returns of the connected tax payer. On this basis, an order came to be passed accepting the explanation putforth by the petitioner.

8.The block was thus lifted, the reasoning being as follows:-

> '.......
> *5) In the reference fifth cited, the taxpayer have submitted reply along with proof of payment for their transaction. The documents produced by the taxpayer were carefully verified with connected taxpayer's GSTR-1, GSTR-2A, GSTR-3B returns. The transaction mentioned in the notice were reflected in the above returns of the each taxpayers and found correct. The Bank statement produced by the taxpayer reveals that they have made payment to all their purchases. From the above point of view it was concluded that the transaction between the taxpayer was genuine in nature. Therefore, the notice issued above is dropped.'*

9.While this is so, notices came to be issued to the petitioner on the basis of information received by the assessing officer to the effect that the suppliers were non-existed or were not conducting business from the place in which registration had been obtained.

10.The petitioner responded to the show cause notice relying on proceedings dated 16.07.2021. The submissions made before R1 were reiterated before R3, the assessing officer, and, infact response dated 15.11.2022 relies, lock, stock and barrel, on proceedings dated 16.07.2021 only. After considering the explanation and hearing the petitioner in detail, R3 has proceeded to pass the impugned order of assessment on 05.01.2023.

11.Mr.Senniappan, learned counsel for the petitioner would strenuously putforth the argument that while R1 has accepted the explanation of the petitioner with regard to the same transactions, it was incorrect for R3 to have arrived at a contrary conclusion holding that the transactions had been conducted with fictitious dealers. One error made is that order dated 18.07.2021 is projected as though passed by a superior officer, whereas in fact, both R1 and R2 are of equal rank.

12.The respondents, for their part, would putforth the argument that the petitioner had not established before R3 movement of goods which is a critical and vital ingredient for claim of ITC. In this regard, they rely on the provisions of Section 16(2) of the Act, particularly Sub Section 2 thereof and reads as follows:

*'Section 16 Eligibility and conditions for taking input tax credit*
*(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)........*
*(b)he has received the goods or services or both.'*

13.It is thus incumbent upon the dealer to establish receipt of the goods or services supplied by him, by the purchasing dealer. R3, in the impugned order of assessment has proceeded on the basis that the petitioner has not established movement of goods. In fact, he refers to various particulars called for by him, such as weighment slips, vehicle receipts for goods transportation, freight for inward and outward related documents, fuel expenses, stating that such documents were not produced.

14.He thus comes to the conclusion that the petitioner has not discharged the burden placed upon him to establish movement of goods and, on the basis of such failure as well as the departmental enquiries, concludes that the transactions were fictitious as the suppliers did not exist.

15.As regards the bank statements, there is an explanation putforth in the order to the effect that cash has been credited and debited the same day and hence the transactions constituted classic circular transactions.

16.True, R3 ought to have made reference to order of R1 dated 16.07.2021 and undoubtedly, this is a flaw in the assessment order. However, in my considered view, it is not a fatal flaw. The power of an assessing officer under Section 73/74 is wide and proceedings for assessment may be initiated in any circumstance where it appears to the proper officer that the claim of ITC by an assessee is incorrect.

17.The mere fact that an order has been passed under Rule 86A(2) will not stand in the way of the assessing officer making an assessment or curtailing his powers in any way, in such an exercise.

18.Since the question of 'movement of goods' is one of the fact and the impugned order proceeds on the basis that the facts required to adjudicate this aspect were not provided by the petitioner, I am not inclined to intervene in the impugned order, which is confirmed. This writ petition is dismissed. No costs. Connected miscellaneous petitions are closed.

19.At this juncture, Mr.Senniappan seeks leave to file an appeal before the first appellate authority and such appeal, if filed within a period of four (4) weeks from date of receipt of this order, shall be received without reference to limitation, but subject to all other statutory compliances including pre-deposit.

**11.04.2023**

vs
Index : Yes
Speaking Order
Neutral Citation : Yes
**Note: Registry is directed to return the original impugned order to the learned counsel for the petitioner.**

To

1.The Assistant Commissioner (RAL)(FAC),
Office of the Deputy Commissioner (ST),
Karur.

2.State Tax Officer (ST),
Kangeyam Assessment Circle,
Kangeyam.

3.Assistant Commissioner (ST),
Kangeyam Assessment Circle, Kangeyam.

4.State Tax Officer,
Inspection VI,
Erode Division, Intelligence wing,
Erode.

**Dr.ANITA SUMANTH, J.**

vs

**W.P.No.11002 of 2023 and**
**WMP.Nos.10893 & 10894 of 2023**

**11.04.2023**