IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19933 of 2023
and
W.M.P.Nos.19287 and 19290 of 2023

M/s.Tajmahal Tobacco Company Private Limited,
Represented by its Managing Director
M.N.A.M.Safiullah,
T.S.No.6087/1A2, Rani Ramadevinagar,
Sesaiya Sastri Road,
Pudukottai – 622 003. ... Petitioner

Vs.

The Deputy State Tax Officer (INT),
Roving Squad,
Tiruppur – VI,
No.16, Emperor Building,
1st Floor, Indira Nagar,
Avinashi Road,
Tiruppur – 641 603. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records on the file of the respondent in Order No.3083/2022-2023 in Form GST MOV-09 and quash the impugned order dated 25.02.2023 passed under Section 129(3) of the Central Goods and Services Tax Act, 2017 read with provisions of the Tamil Nadu Goods and Services Tax Act, 2017 as illegal and not in accordance with law.

For Petitioner : Mr.S.Gautham Venkata Narayanan

For Respondent : Mrs.K.Vasanthamala
Government Advocate

ORDER

Mrs.K.Vasanthamala, learned Government Advocate takes notice on behalf of the respondent.

2. The petitioner is aggrieved by the impugned order No.3083/2022-2023 in Form GST MOV-09 dated 25.02.2023 passed by the respondent under Section 129(3) of the Central Goods and Services Tax (CGST) Act, 2017 read with the relevant provisions of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017.

3. The specific case of the petitioner is that the petitioner had purchased two consignments of Tobacco Leaves from the Department of Agricultural Marketing and Agri Business at Erode on 25.02.2023 for a sum of Rs.1,70,422/- (Rs.99,789/- + Rs.70,633.50/-) at Rs.15.50 per Kilogram of Tobacco Leaves.

4. It is submitted that the consignments were transported by the petitioner to its Branch Office at Thirumalairaya Samuthiram, Pudukkottai.

5. Though the petitioner has a main place of business at Punjai Puliampatti, Erode, it is submitted that immediately after the vehicle was detained by the Officers at Kodiyampalayam Four Road enroute from Erode to Pudukottai, the necessary tax invoice for transferring the consignments from its Head Office at Punjai Puliampatti, Erode to its Branch Office at Thirumalairaya Samuthiram, Pudukottai, was produced and also the corresponding invoices under which, the consignments were purchased from the Department of Agricultural Marketing and Agri Business at Erode.

6. It is submitted that although the driver did not have necessary documents, namely the invoices, value of the consignments being less than Rs.1,00,000/- in each of the invoice, the petitioner was not required to obtain e-way bill and therefore, no e-way bill was generated by the seller namely the Department of Agricultural Marketing and Agri Business at Erode.

7. The learned counsel for the petitioner would submit that the impugned order is a verbatim repetition of the cyclostyle notice issued in Form GST MOV-09 and suffers from the vice of non-application of mind and therefore, the impugned order is liable to be quashed and the writ petition be allowed.

8. That apart, the learned counsel for the petitioner would submit that since the Tobacco Leaves thrown to decay, the petitioner has paid penalty/duty that was levied in the impugned order at Rs.3,29,850/- towards CST and equal amount towards GST amounting to Rs.6,59,700/- to release the goods.

9. Per contra, the learned Government Advocate for the respondent would submit that the impugned order is well-reasoned and requires no interference, as there were no documents available at the time of transportation.

10. That apart, it is submitted that there are huge suppression of value. It is also submitted that the value of the Tobacco Leaves on the date of purchase i.e., on 25.02.2023 was Rs.60/- per Kilogram and not Rs.15.50/- per Kilogram as has been claimed by the petitioner.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

12. In my view, no prejudice will be caused to the petitioner, if the petitioner is directed to workout its remedy before the Appellate Authority under the respective GST enactments as there are several disputed questions that arise for consideration related to the value, even if the value given in the invoices produced by the petitioner are considered. There is a shadow of doubt, which needs to be cleared. Therefore, it would ideal for the petitioner to workout remedy before the appellate authority/appellate forum.

13. Considering the above, I am inclined to dismiss this writ petition. However, liberty is given to the petitioner to file a statutory appeal within a period of thirty days from the date of receipt of a copy of this order. If such

appeal is filed by the petitioner within such time, the appellate authority shall dispose the appeal, as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order.

14. Needless to state, in case the petitioner succeeds the amount that has been deposited for releasing the goods, shall be either released or adjusted against the existing tax liability of the petitioner in accordance with law.

15. This Writ Petition is dismissed with the above observations and liberty. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

07.07.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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Note: Registry is directed to return the originals of the impugned order dated 25.02.2023 to the counsel for the petitioner to facilitate the petitioner to file statutory appeal.

To

The Deputy State Tax Officer (INT),
Roving Squad,
Tiruppur – VI,
No.16, Emperor Building,
1st Floor, Indira Nagar,
Avinashi Road,
Tiruppur – 641 603.

C.SARAVANAN, J.

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