IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25792 of 2023
and
W.M.P.Nos.25230 and 25231 of 2023

M/s.Alutec Facades India Private Limited,
(Formerly known as KMR Facades Private Limited)
Represented by its Director N.Venkatarangan,
Plot No.C-2/A, Phase-I,
MEPZ SEZ, Tambaram,
Chennai-600 045. ... Petitioner

Vs.

The Assistant Commissioner (ST),
K.K.Nagar Assessment Circle,
Station No.1, 5th Floor, CT Annex Building,
Greams Road, Chennai- 600 006. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to order dated 30.01.2020 in GSTIN/2017-2018 33AAECK5811G1ZU on the file of the respondent and quash the same as illegal, arbitrary, per contra to the statutory provisions and violate of principle of natural justice and direct the respondent to allow the TDS amount deducted and paid in the account of the petitioner as eligible credit amounting to Rs.5,56,316/- as tax paid on inputs and consequently direct the respondent to refund the tax amount of Rs.5,56,316/- paid by the petitioner company.

For Petitioner : Mr.S.Lakshmi Narayanan

For Respondent : Mr.TN.C.Kaushik
Additional Government Pleader

ORDER

Mr.T.N.C.Kaushik, learned Additional Government Pleader takes notice on behalf of the respondent.

2. The petitioner has approached this Court after a lapse of long period as the impugned order is dated 30.01.2020. Relevant portion of the impugned order reads as under:-

"Tvl.KMR FACADESPVT LTD, a taxable person under Tamil Nadu Goods and Services Tax Act, 2017 (here after shortly called as TNGST Act). The taxable person was already registered under the repealed Tamil Nadu Value Added Tax Act, 2006 (here after shortly called as TNVAT Act) and migrated to the TNGST Act, 2006.

The taxable person had filed TRAN 1 return under TNGST Act as detailed below:

Description	As per claim made in TRAN 1 return
Excess Tax carried forward to electronic credit ledger as state tax in Tran-1	Rs. 556316.00
Total	Rs. 556316.00

As per second proviso to the TNGST Act 2017, which reads as follows:

Provided further that so much of the said credit as is attributable to any claim related to Section 3, sub - section (3) of Section 5, Section 6, Section 6A or subsection (1) of Section 8 of the Central Sales Tax Act, 1956 which is not substantiated in the manner, and within the period, prescribed in the rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 shall not be eligible to credited to the electronic credit ledger.

The taxable person has not mentioned the details of the C, H, F Forms received in Table 5(b) of Tran 1."

3. The learned counsel for the petitioner has placed reliance on the decision of the learned single Judge of this Court in **M/s.DMR Constructions, Represented by its Partner, Namakkal** Vs. **The Assistant Commissioner, Commercial Tax Department, Namakkal** in W.P.Nos.9991 of 2020 etc batch, wherein, in Paragraphs 31 and 32, this Court has held as under:-

"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."

4. A reading of the impugned order indicates that there is no clear discussion as to which provision has been referred to in the paragraph immediately following the table in the impugned order. There is also no discussion in the impugned order while denying the amount of Input Tax Credit that was allegedly wrongly transmitted by the petitioner in Trans-1.

5. Considering the above, the impugned order is set aside and the case is remitted back to the respondent to pass a fresh order on merits and in accordance with law within a period of four weeks from the date of receipt of a copy of this order.

6. Needless to state, before passing such order, the petitioner shall be heard.

7. This Writ Petition is disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

04.09.2023

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

arb/pal

To

The Assistant Commissioner (ST),
K.K.Nagar Assessment Circle,
Station No.1, 5th Floor, CT Annex Building,
Greams Road, Chennai- 600 006.

C.SARAVANAN, J.

arb/pal

W.P.No.25792 of 2023
and
W.M.P.Nos.25230 and 25231 of 2023

04.09.2023