IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27046 of 2023
and
W.M.P.Nos.26485 & 26489 of 2023

Tvl.Surana Enterprises (Firm),
Represented by its Partner,
Mr.Mahaveer.T
6, NA, Police Patrol Road,
Salem,
Tamil Nadu -636 002. ... Petitioner

Vs

The Assistant Commissioner (ST)
Seevapet Circle,
Salem. ... 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 impugned proceedings of the respondent in Reference No. ZD330223044909E in GSTIN : 33AAIFS7091P1ZH/2017-2018 dated 10.02.2023 and quash the same as passed contrary to the provisions of the CGST Act, 2017 and TNGST Act, 2017 against the principles of natural and also without considering the objections and the documents filed by the petitioner and further direct the respondent to refund the sum of Rs. 5,27,700/-.

For Petitioner : Mr.A.N.R.Jayaprathap

For Respondent : Mr.V.Prashanth Kiran
Government Advocate

ORDER

Mr.V.Prashanth Kiran, learned Government Advocate takes notice on behalf of the respondent.

2.The petitioner has challenged the impugned order dated 10.02.2023 passed under Section 74 of the TNGST Act, 2017. The petitioner was issued with a notice in DRC-01 on 29.10.2022 and thereafter a notice in GST DRC-01, dated 08.12.2022. The petitioner has responded to the same on 10.11.2022, which has culminated in the impugned order. The petitioner's electronic credit ledger was blocked earlier under Rule 86-A(1) of the TNGST Rules, 2017 on the ground that the supplier namely Tvl. Sree Mangalmoorthi Starch Industries, 1st Floor, H-19, Periyar Nagar, Erode – 638 009 was not a genuine supplier and the said tax supplier had issued bogus tax invoices to enable the dealer such as petitioner to avail irregular input tax credit.

3.The specific case of the petitioner is that the petitioner has responded to the notice and it has been found in the Web Portal. The said supplier namely Tvl. Sree Mangalmoorthi Starch Industries, is still holding the registration which has not been cancelled.

4.That apart, the learned counsel for the petitioner would submit that *post facto* the petitioner has also paid the disputed tax as has been confirmed vide impugned order on 02.09.2023.

5.The learned counsel for the petitioner further submits that the petitioner may be given one opportunity to re-explain the case afresh. That apart, it is submitted that the petitioner has also filed an application under Section 161 of the TNGST Act, 2017 for rectification of the order dated 10.02.2023 on 08.03.2023.

6.The learned Government Advocate for the respondent on the other hand would submit that there is no merits in this writ petition, as the impugned order is dated 10.02.2023. The challenge is beyond the statutory period prescribed for filing an appeal before the Appellate Authority and in terms of the decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, 2020 SCC Online SC 440. Therefore, this writ petition is liable to be dismissed.

7.That apart, it is submitted that the petitioner has an appellate remedy under Section 107 of the TNGST Act, 2017. Hence, he further submits that the writ petition may be dismissed by asking the petitioner to work out his remedy before the Appellate forum.

8.That apart, the learned Government Advocate for the respondent would further submits that the Department has not received the copy of the so called rectification Application under Section 161 of the TNGST Act, 2017 dated 08.03.2023.

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

10.The petitioner appears to have tax invoices and other collateral evidence to substantiate that the supplier namely, Tvl. Sree Mangalmoorthi Starch Industries, 1st Floor, H-19, Periyar Nagar, Erode – 638 009 had indeed supplied goods. The registration was valid as on date of supply, the matter would require a detailed consideration by the Authority. The petitioner has paid the disputed tax that has been confirmed vide impugned order dated 10.02.20233 on 02.09.2023.

11.Considering the above, the impugned order is set aside and the case is remitted back to the respondent to pass a fresh orders on merits and in accordance with law , within a period of eight weeks from the date of receipt of copy of this order. Consequently, the impugned order stands quashed. It is made clear that the amount that has been paid will be subject to final appropriation after disposal of the denovo proceedings pursuant to order of this Court.

12.This writ petition is disposed of. No costs. Consequently, connected writ miscellaneous petitions are closed.

14.09.2023

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No
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To
The Assistant Commissioner (ST)
Seevapet Circle,
Salem.

C.SARAVANAN, J.

jas/nsl

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