IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.27716 of 2023
and
W.M.P.Nos.27198 and 27199 of 2023

M/s.Harshandh Construction Private Limited,
Represented by its Director M.Dhandapani,
No.133, NH 1, MIG Vallal Nalliya Kodan Street,
Maraimalai Nagar,
Chengalpattu District. ... Petitioner

Vs.

1.The Assistant Commissioner (ST),
Maraimalai Nagar Assessment Circle,
No.4/109, Chennai-Bangalore High Way,
Varadarajapuram, Chennai - 600 123.

2.The Deputy Commissioner (CT) Appeals,
Greams Road, Chennai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records relating to the order dated 14.07.2020 (but electronically generated on 17.07.2020 in GSTN 33AACCH9506R1Z4/2017-2018 passed by the first respondent and quash the same as violative of principles of natural justice and contrary to the decision of this Hon'ble Court made in W.P.Nos.9991 of 2020 etc batch dated 26.02.2021 and contrary to the provisions of law.

For Petitioner	:	Mr.M.A.Mudimannan
For Respondents	:	Ms.Amirtha Poonkodi Dinakaran Government Advocate

ORDER

Ms.Amirtha Poonkodi Dinakaran, learned Government Advocate takes notice on behalf of the respondents.

2. The petitioner is aggrieved by the impugned Assessment Order dated 14.07.2020 of the first respondent in GSITN No.33AACCH9506R1Z4 for the Assessment Year 2017-2018.

3. This writ petition is late by almost three years after the impugned Assessment Order was passed on 14.07.2020 as it has been filed only on 15.09.2023.

4. The issue in the present writ petition pertains to denial of Tax Deducted at Source (TDS) which was claimed as Transitional Credit under Section 140 of the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017 on the eve of implementation of the respective GST enactments with effect from 01.07.2017. The petitioner was entitled to set-off the Tax Deducted at Source (TDS) towards its tax liability under the provisions of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006.

5. The first respondent has strictly followed the provisions of the Act and has denied the same with the following observations:-

> ***"I have considered their objections. But as per the section 140(1) of the SGST Act 2017, the registered person is entitled to take unutilized ITC, if any carried forward in the return relating to the period, furnished by him under existing act and under this act.***
>
> ***In view of the above, the dealer can be carried forward ITC only, not excess tax paid by them. Hence the objections filed by the registered person are overruled and they are hereby ordered to make payment of the input tax credit wrongly availed along with the interest and penalty as detailed below:***

Description	Amount Payable
Input Tax Credit carried forwarded wrongly to the electronic credit ledger as State Tax from GST TRAN-1 which was wrongly availed on	Rs.3,56,971/-

Description	Amount Payable
Interest	Rs.2,46,072/-
Period From : 30.09.2017	
Period To : 30.06.2020	
No. of Days : 1034	
Interest Amount = Rs.3,56,971/- * 24%	
Penalty u/s 73	Rs.10,000/-
Total	Rs.6,13,043/-

The above dues are entered in necessary columns of form DRC-07."

6. The learned counsel for the petitioner would submit that the impugned order is unsustainable as it precedes a communication of the Joint Commissioner (ST), Chennai (South) Division, Chennai - 600 006 dated 13.07.2020. The learned counsel for the petitioner further submitted that a copy of the said notice was not furnished to the petitioner before the impugned Assessment Order was passed.

7. That apart, the learned counsel for the petitioner submits that after the impugned Assessment Order was passed, the issue came up before this Court in a batch of writ petitions as that of the petitioner in W.P.Nos.9991 of 2020 etc batch in the case of **M/s.DMR Constructions and others** Vs.

Assistant Commissioner wherein, the learned Single Judge of this Court has allowed the writ petitions vide an order dated 26.02.2021.

8. The learned counsel for the petitioner would therefore submit that on merits, the issue is squarely covered in favour of the petitioner in terms of the above decision, which was followed by this Court also in W.P.No.5448 of 2020 in the case of **M/s.Sekar Constructions** Vs. **The Assistant Commissioner (ST), Kancheepuram District**, vide its order dated 23.12.2021.

9. The learned Government Advocate for the respondents on the other hand would submit that the writ petition is belated and is therefore liable to be dismissed in the light of the decision of the Hon'ble Supreme Court in the case of **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, 2020 SCC Online SC 440.

10. It is submitted that the issue having attained finality as far as the petitioner is concerned as the petitioner has neither filed a statutory appeal

within the prescribed time nor approached this Court on an earlier occasion, this Writ Petition deserves to be dismissed on account of latches.

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

12. Although, explanations given by the petitioner in approaching this Court belatedly are not satisfactory, the issue on merits is *prima facie* covered in favour of the petitioner and against the revenue by the decision of the learned Single Judge of this Court in **M/s.DMR Constructions** case (referred to supra).

13. The said decision has been followed by this Court in **M/s.Sekar Constructions** case (referred to supra) vide its order dated 23.12.2021 in W.P.No.5448 of 2020.

14. Considering the above, Court is inclined to set aside the impugned Assessment Order, and remits the case back to the first respondent to pass a fresh order *de novo* on merits and in accordance with law under the

provisions of the TNGST Act and in the light of the decision of this Court in **M/s.DMR Constructions** case (referred to supra) which was followed in **M/s.Sekar Constructions** case (referred to supra).

15. This exercise shall be carried out by the first respondent within a period of sixty days from the date of receipt of a copy of this order. Meanwhile, the petitioner shall file a detailed reply within a period of thirty days from the date of receipt of a copy of this order.

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

22.09.2023

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

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C.SARAVANAN, J.

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To

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