IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.12.2023

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.35189, 35192 & 35193 of 2023
and
W.M.P.Nos.35178, 35181 & 35183 of 2023

M/s.Navaladi Agro Service Rep. by
Its Proprietor Sri.A.Maheswaran,
No.3/508, A Mohanur Road,
Valayapatti, Namakkal 637 020.

... Petitioner in all petitions

Vs.

The Deputy State Tax Officer-2 (Rural),
Namakkal

... Respondent in all petitions

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in GSTIN:33AZDPM6823B1ZR/2017-18, GSTIN:33AZDPM6823B1ZR/2018-19 and GSTIN:33AZDPM6823B1ZR/2019-20 respectively and quash the proceedings dated 30.09.2023.

For Petitioner
in all petitions : Mr.Raveendran B

For Respondent
in all petitions : Mr.C.Harsha Raj,
Additional Government Pleader

COMMON ORDER

These writ petitions have been filed challenging the impugned proceedings of the respondent dated 30.09.2023.

2. Mr.C.Harsharaj, learned Additional Government Pleader, takes notice on behalf of the respondent. By consent of the parties, the main writ petitions are taken up for disposal at the admission stage itself.

3. The case of the petitioner was that in terms of the order passed by this Court on 31.01.2023, it has been stated as follows:

> *"In the light of the above discussion, these Writ Petitions are allowed subject to the following conditions:-*
>
> *i. The petitioners are directed to file their returns for the period prior to the cancellation of registration, if such returns have not been already filed, together with tax*

defaulted which has not been paid prior to cancellation along with interest for such belated payment of tax and fine and fee fixed for belated filing of returns for the defaulted period under the provisions of the Act, within a period of forty five (45) days from the date of receipt of a copy of this order, if it has not been already paid.

ii. It is made clear that such payment of Tax, Interest, fine / fee and etc. shall not be allowed to be made or adjusted from and out of any Input Tax Credit which may be lying unutilized or unclaimed in the hands of these petitioners.

iii. If any Input Tax Credit has remained utilized, it shall not be utilised until it is scrutinized and approved by an appropriate or a competent officer of the Department.

iv. Only such approved Input Tax Credit shall be allowed for being utilized thereafter for discharging future tax liability under the Act and Rule.

v. The petitioners shall also pay GST and file the returns for the period subsequent to the cancellation of the registration by declaring the correct value of supplies and payment of GST shall also be in cash.

vi. If any Input Tax Credit was earned, it shall be allowed to be utilised only after scrutinising and approving by the respondents or any other competent authority.

vii.The respondents may also impose such restrictions / limitation on petitioners as may be warranted to ensure that there is no undue passing of Input Tax Credit pending such exercise and to ensure that there is no violation or an attempt to do bill trading by taking advantage of this order.

viii.On payment of tax, penalty and uploading of returns, the registration shall stand revived forthwith.

ix. The respondents shall take suitable steps by instructing GST Network, New Delhi to make suitable changes in the architecture of the GST Web portal to allow these petitioners to file their returns and to pay the tax/penalty/fine.

x. The above exercise shall be carried out by the respondents within a period of thirty (30) days from the date of receipt of a copy of this order.

xi. No cost.

xii.Consequently, connected Miscellaneous Petitions are closed."

4. In terms of the above order passed by this Court, the petitioner had filed their returns and thereafter, made payment of tax along with interest and penalty. Further, since the respondent had allowed the

petitioner to utilise the ITC credit, the petitioner had utilised the same for the aforesaid payment. However, now the respondent had called the petitioner to deposit the ITC credit to the extent of amount, which was utilised to pay the tax, interest, penalty etc. Further, they insisted for the payment of tax along with interest and penalty out of the amount available in electronic cash ledger, which is according to the petitioner contrary to the order passed by this Court. Hence, these writ petitions.

5. On the other hand, the learned counsel appearing for the respondent would submit that when this Court passed the aforesaid order, at paragraph No.229(ii), it is made clear that such payment of tax should not be allowed to be made or adjusted from and out of any ITC, which may be lying unutilized or unclaimed in the hands of these petitioners. However, contrary to the above order, the petitioner had utilised the ITC for payment of tax along with interest and penalty. Therefore, the impugned notice was issued to deposit the said amount to the ITC Credit and to make the payment of tax, interest and penalty by utilizing the electronic cash ledger. Therefore, he would contend that there is no illegality in the said impugned proceedings. Hence, he prays for the

dismissal of these writ petitions.

6. Heard the learned counsel for the petitioner and the respondent and also perused the materials available on record.

7. In the present case, this Court had passed an order dated 31.01.2022 directing the petitioner not to make any payment of tax, interest and penalty from and out of Input Tax Credit. However, contrary to the aforesaid order, the petitioner had utilised the ITC credit for payment of tax, interest and penalty. Hence, the respondent had called the petitioner to deposit the said ITC credit to the extent of utilisation, which was made contrary to the order passed by this Court. Further the respondent had also insisted to pay the tax, interest and penalty by utilising the electronic cash ledger under Section 50 of the Act.

8. In view of the above, I do not find any illegality in the passing of the impugned proceeding by the respondent since the petitioner had utilised the ITC, which is contrary to the order passed by this Court. Further, the respondent is certainly entitled to take action against the petitioner for violation of said order of this Court. However, they are only

insisting the petitioner to pay the amount whatever they had utilise from ITC credit.

9. Therefore, since this Court do not find any substance in the submissions made by the learned counsel for the petitioner, this Court is inclined to dismiss these writ petitions. Accordingly, these writ petitions are dismissed. No cost. Consequently, the connected miscellaneous petitions are also closed.

18.12.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

KRISHNAN RAMASAMY.J.,

nsa

To

The Deputy State Tax Officer-2 (Rural),
Namakkal

W.P.Nos.35189, 35192 & 35193 of 2023
& W.M.P.Nos.35178, 35181 & 35183 of 2023

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