BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.6363 of 2022

Alpha Minerals & Chemicals
Represented by its Managing Partner
A.M.Asharaf,
No.433, Sri Ramankulam Road,
Pottal, Kalladaikurichi,
Tirunelveli District. ... Petitioner

vs.

1.The GST Council,
O/o. The GST Council,
Secretariat, 5th Floor,
Tower-II, Jeevan Bharati Building,
Janpath Road, Connaught Place,
New Delhi - 110 001.

2.The Commissioner of Commercial Taxes,
O/o. Commissioner of Commercial Taxes, Ezhilagam, Chepauk,
Chennai-600 005.

3.The Joint Commissioner(IT),
PAPJM Buildings,
Greams Road, Chennai-600 006.

4.The Joint Commissioner (Sales Tax),
Tirunelveli Division,
AR Line, Palayamkottai, Tirunelveli.

5.The State Tax Officer,
Ambhasamuthram Assessment Circle,
Ambhasamuthram, Tirunelveli District.

6.The Chief Executive Officer,
GST Network,
4th Floor, World Mark 1,
East Wing, Asset 11,
Hospitality District,
Aerocity, New Delhi-110 037. ... Respondents

(R6 is impleaded vide court order dated 20.12.22 in W.M.P.(MD).No.22599/2022 in W.P.(MD).No.6363/2022)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent vide R5/900803/2020 dated 01.02.2021 and quash the same as illegal as devoid of merits and further direct the respondents to amend the firm's legal name as 'Alpha Minerals & Chemicals' and pan number AAGFA6317E in the TN GST registration certificate (Form GST REG-06).

For Petitioner : Mr.Raja Karthikeyan

For R-1 & R-6 :Mr.R.Nanda Kumar,
Senior Standing Counsel
Assisted by
Mr.S.Ragaventhre,
Junior Standing Counsel

For R-2 to R-5 :Mr.M.Ramesh,
Government Advocate

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O R D E R

This Writ Petition is filed for Certiorarified Mandamus, to quash the impugned order dated 01.02.2021 and further directing the respondents to amend the firm's legal name as 'Alpha Minerals & Chemicals' and pan number AAGFA6317E in the TN GST registration certificate (Form GST REG-06).

2. The petitioner is a dealer and he is having a partnership firm and the said partnership is having a registered GST number. The petitioner is an assessee under income tax and having a PAN number. While registering the GST number, the 5th respondent wrongly entered the PAN number which is given under Income Tax Act. Due to the wrong entry, the respondents have entered the name in the individual capacity in the GST form. The petitioner has not entered the PAN number of his partnership firm, but has entered the PAN number of the Managing Director. Therefore, the petitioner requested the respondents to rectify the error right from 2017 onwards. Through the impugned order dated 01.02.2021, the respondents have declined the same and stating that under GST if any error is committed, the said error cannot be rectified. However, the petitioner is allowed to cancel the registration and seek for a fresh registration.

3. In the counter, it has been stated that

3.I humbly submit that Goods and Service Tax Network (in short 'GSTN', a non-profit non-government company) provides shared IT infrastructure and services to both Central and State governments including taxpayers and other stakeholders. It is an electronic platform providing 'Registration Front end services, Returns and payments to all taxpayers. GST Registration is PAN (Permanent Account Number) based and as proviso (d) to Rule 19 (1) of Central Goods and Services Rules, 2017, there is no provision to change Permanent Account Number (PAN) in GST Registration and the relevant portion of the Rule is reproduced below.

“where a change in the constitution of any business results in the change of the Permanent Account Number of a registered person, the said person shall apply for fresh registration in FORM GST REG-01.”

Accordingly, there is no provision in the CGST Rules for amending PAN in GST Registration and legal remedy for this lapse of feeding wrong PAN is only cancellation of Registration.

4. I humbly submit that GST registration is carried out electronically based on PAN, after validation of Permanent Account Number issued by Income Tax Department and Aadhar Number issued by UIDAI (established by Government of India) and hence Section 21 of General Clauses Act, 1897 is not applicable to this petition regarding changing the PAN in the GST Registration.

4. Therefore, the petitioner is having a remedy to cancel the registration and seek for fresh registration. However, the respondents have declined the input tax credit from 2017 until today. The learned Senior Counsel appearing for the respondents 1 and 6, submitted that he is not having any instructions regarding the claim of ITC and sought time. But this Court is of the considered opinion that for the said reason, instructions are not necessary.

5. ITC is a right of the assessee and the respondents are not having any power to decline ITC. For granting ITC the respondents are having right to peruse the documents. Therefore, the respondents are directed to ascertain the input tax credit based on the available documents from 2017 to 2023 and grant the same, so that the petitioner shall avail the ITC credit as well.

6. With the above direction, this Writ Petition is allowed. There shall be no order as to costs.

29.08.2023

Index : Yes / No
Internet : Yes
NCC : Yes / No
Nsr

To

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S.SRIMATHY, J
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