BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No. 27647 of 2022
and
W.M.P.(MD) Nos. 21760 and 21762 of 2022

Tvl. Devesh Spices,
Rep., by its Proprietor,
Petchiyammal,
107/1FW/29, Subban Street,
By Pass Road, Theni,
Theni District. .. Petitioner

Vs.

The Assistant Commissioner (CT)/(ST),
O/o. Assistant Commissioner (CT),
Theni-I Assessment Circle,
Theni, Theni District. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings of the respondent in TIN. 33636424248/2016-17 dated 10.10.2019 and quash the same and further direct the respondent to re-do the assessment proceedings afresh.

For Petitioner : Mr.Raja. Karthikeyan

For Respondent : Mr.T. Amjadkhan
Government Advocate

ORDER

The writ petitioner has moved this Court to set aside the order passed by the respondent in TIN.33636424248/2016-17 dated 10.10.2019.

2. It is the case of the petitioner that she is a dealer in cardamom and pepper and presently registered under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as "the TNGST Act"). She would submit that she has been regular in the filing of her monthly returns.

3. While so, she was surprised to receive a show cause notice dated 01.02.2019 from the respondent directing her to show cause and pay a wrongly carried forward credit amount of Rs.1,36,563/- along with

interest. The petitioner would submit that she had given an explanation and requested the proposal to be stopped. However, the respondent, without providing a personal opportunity of hearing and perusing the documents, had passed a cryptic non-speaking order, which is the subject matter of challenge in this writ petition.

4. The issue involved is that the petitioner carried forward credit of Rs.1,36,563/- through TRAN-1. However, she did not have any excess credit for the year 2017. The petitioner would submit that the allegation that the petitioner did not have any excess credit is absolutely false. The petitioner would submit that from the return submitted, it is clear that the petitioner had an excess credit of Rs.1,36,563/- (Rs.1,927/- + Rs. 1,34,636/-). The petitioner would further submit that under Section 140 of the TNGST Act, they are eligible to carry forward any credit availed as on 30.06.2017. Therefore, she would submit that the impugned order has to necessarily fail on the ground that no personal hearing has been given and that apart, a non-speaking order has been passed.

5. A counter affidavit has been filed by the respondent *inter alia* contending that the petitioner has wrongly availed input tax credit under TRAN-1 for a sum of Rs.1,36,563/-. The allegation that the personal hearing has not been given was refuted and the respondent would submit that the petitioner had appeared and submitted her explanation and on considering the records, the impugned order has been passed.

6. Heard the learned counsel on either side.

7. Perusal of the relevant record would show that for the month ending June, 2017, the entry under the head “excess input tax credit” at column 11 is shown as '0.00'. This fact has been captured in the impugned order.

8. In the light of the above, the contention of the petitioner that she had a credit limit appears to be incorrect. Since the entire writ petition rests on this single issue and as the same has not been proved by the petitioner, the petitioner is not entitled to any relief. Consequently, this

Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

21.06.2023

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

abr

To

The Assistant Commissioner (CT)/(ST),
O/o. Assistant Commissioner (CT),
Theni-I Assessment Circle,
Theni, Theni District

P.T.ASHA, J.

abr

W.P.(MD) No.27647 of 2022

Dated: 21.06.2023