IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.1325 of 2022
and
W.M.P.No.1439 of 2022

Tvl.SAS Agencies,
Represented by its Proprietor S.B.Satish Kumar ... Petitioner

Vs.

1.The Deputy Commissioner (ST),
GST-Appeal, Chennai-I,
PAPJM Annexe Building, 3rd Floor,
Greams Road,
Chennai – 600 006.

2.The Assistant Commissioner (ST),
Saligramam Assessment Circle,
No.15 & 16, 100 Feet Road,
Malligai Avenue,
Kolathur, Chennai – 600 099. ... 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 of the first respondent order dated 26.10.2021 in Order No.AP/GST/73/2021 and quash the same to the extent that it confirms levy of interest.

For Petitioner : Mr.Adithya Reddy

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

ORDER

The petitioner has filed this writ petition challenging the order passed by the first respondent in Order No.AP/GST/73/2021 dated 26.10.2021.

2. The dispute has arisen on account of the attempt of the petitioner to transition the amount that was to be deposited by the petitioner as a condition under the provisions of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 against the Assessment Order dated 21.10.2010 passed by the Assessing Officer for the Assessment Year 2006-2007.

3. The petitioner had earlier suffered an adverse Assessment Order under the provisions of the Central Sales Tax (CST) Act, 1956 on 21.10.2010 wherein, the petitioner was imposed tax liability of Rs.20,68,175/-.

4. Aggrieved by the same, the petitioner had filed an appeal before the Appellate Deputy Commissioner (CT)-VI (FAC) in Appeal No.APC.3/2012. The Appellate Deputy Commissioner by an order dated 18.10.2013, had

allowed the appeal by way of remand. Pursuant to the aforesaid order, the Assessing Officer namely the Assistant Commissioner (CT), Saligramam Assessment Circle, Chennai passed revised Assessment Order dated 24.07.2015 for the Assessment Year 2006-2007 whereby, the tax that was demanded from the petitioner was confined only to Rs.53,279/- after adjusting a sum of Rs.49,377/-. The balance to be paid by the petitioner was restricted to Rs.3,902.00/-. Accordingly, Form-3 was also issued to the petitioner.

5. Operative portion of the Revised Assessment Order dated 24.07.2015 passed by the Assistant Commissioner (CT), Saligramam Assessment Circle, Chennai for the Assessment Year 2006-2007 under the provisions of the CST Act reads as under:-

> "Accordingly, the dealers have filed the connected documents, which were verified and found to be admissible. Hence, the exemption on a turnover of Rs.1,96,96,902.00/- is hereby allowed and the assessment is revised accordingly.
>
> In view of the above facts, the total and taxable turnover of the dealer is re-determined at Rs.2,10,22,370.00/- and Rs.13,25,468.00/- respectively under CST Act, 1956 for the financial year 2006-2007. The taxable turnover is assessed at different rates as detailed below:

Turnover	Rate	Tax
Rs.13,21,468.00	4%	Rs.52,859.00
Rs. 4,000.00	10.5%	Rs. 420.00
	Tax due	Rs.53,279.00

Tax paid	Rs.46,377.00
Balance	Rs. 3,902.00

Notice is Form 3 is issued."

6. Meanwhile, the provisions of the TNVAT Act can be subsumed with the TNGST Act which came into effect from 01.07.2017. Since the pre-deposit made was not refunded as was required under Section 42(3) of the TNVAT Act, 2006 read with Rule 11 of the Central Sales Tax (Tamil Nadu) Rules, 1957 in Form P, the petitioner transitioned the amount pre-deposited at the time of filing of appeal as unutilized input tax credit under Section 140 of the TNGST Act, 2017 and discharged the tax liability for the ensuing period under the TNGST Act, 2017.

7. The attempt of the petitioner was sought to be negated by passing an order dated 22.10.2020 holding that the petitioner was not entitled to transition the aforesaid amount of pre-deposit and thereby the proposal in the show cause notice that preceded the aforesaid order was confirmed and thus, a sum of Rs.5,77,855/- was sought to be recovered together with interest up to 22.10.2020 which was calculated at Rs.4,29,354/-.

8. The petitioner also preferred an appeal under Section 107 of the TNGST Act, 2017 before the Deputy Commissioner (ST), GST-Appeal, Chennai-I, Chennai - 6.

9. By an order dated 26.10.2021, the Deputy Commissioner (ST), GST-Appeal, Chennai-I, Chennai - 6 also rejected the appeal, which is now subject matter of challenge in this writ petition.

10. Learned Government Advocate for the respondents would submit that there is no merits in the challenge to the impugned order as the petitioner was not entitled to transition the amount pre-deposited pursuant to the Assessment Order dated 24.07.2015 passed by the Assistant Commissioner (CT), Saligramam Assessment Circle, Chennai. It is submitted that the petitioner was entitled to transition only unutilized Input Tax Credit in terms of Section 140 of the TNGST Act, 2017. It is further submitted that the petitioner in any event has an alternate remedy under Section 112 of the TNGST Act, 2017 before the GST Tribunal. Therefore, on this score also, it is submitted that this writ petition is liable to be dismissed.

11. I have considered the arguments advanced by the learned counsel for

the petitioner and the learned Government Advocate for the respondents.

12. I am of the view, the impugned order passed by the Appellate Authority namely the first respondent confirming the order dated 22.10.2020 of the second respondent is liable to be interfered with.

13. As a condition for entertaining the appeal under Section 51 of the TNVAT Act, 2006, an amount of Rs.6,25,000/- was pre-deposited. There is no dispute that the petitioner was indeed entitled to refund of amount pre-deposited pursuant to the order of the Appellate Deputy Commissioner dated 18.10.2013 pursuant to which, a fresh revised Assessment Order was also passed on 24.07.2015. At best, the respondents could have appropriated the balance tax liability due of Rs.3,902.00/- from and out of the amount pre-deposited under Section 51 of the TNVAT Act, 2006, while filing appeal against the Assessment Order dated 21.10.2010.

14. Although the petitioner may have wrongly followed the procedure by transitioning the amount, the issue is revenue neutral as admittedly the Commercial Tax Department was duty bound to refund the amount that was

pre-deposited as condition for filing appeal before the Appellate Deputy Commissioner against the Assessment Order dated 21.10.2010 pursuant to the revised Assessment Order dated 24.07.2015 dropping the demand substantially.

15. Under these circumstances, the impugned order dated 26.10.2021 passed by the first respondent affirming the order dated 22.10.2020 of the second respondent is quashed with consequential relief.

16. The Writ Petition stands allowed. No costs. Connected Writ Miscellaneous Petition is closed.

22.08.2024
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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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