



W.P.No.11030 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 26.04.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.11030 of 2024
and W.M.P.Nos.12108 & 12109 of 2024

Vela Agencies
Rep by its Proprietor
D.Jagannathan
D.No.307, Hospital Road,
Kavindapadi, Erode,
Tamil Nadu 638 455.

... Petitioner

-VS-

Assistant Commissioner ST FAC
Bhavani Assessment Circle
No.158/1002, Pookadai Veedhi
Bhavani, Erode District 638 001.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the impugned order of the respondent passed in GSTIN: 33AEZPJ742B1ZF / 2018-2019 dated 23.06.2023 and quash the same.

For Petitioner : Mr.N.Murali



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For Respondent : Mr.V.Prashanth Kiran, GA (T)

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ORDER

An order dated 23.06.2023 is assailed on the ground that the impugned order proceeds on a completely different basis from the show cause notice. The petitioner received intimation dated 24.11.2022 and show cause notice dated 29.12.2022. The petitioner replied to the intimation on 28.12.2022 by stating that the petitioner was a distributor of Aircel Limited (Aircel) and that the petitioner was unable to conduct business after 28.02.2018 due to the closure of the business of Aircel. The impugned order was issued in these circumstances.

2. Learned counsel for the petitioner referred to the intimation and show cause notice and pointed out that the petitioner was called upon to show cause as to why tax liability of Rs.8,27,252/- should not be imposed with regard to sales suppression, which was estimated



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on the basis of the Input Tax Credit availed of by the petitioner. In contrast, learned counsel submits that tax liability of Rs.14,97,072/- was imposed under the impugned order by comparing the petitioner's GSTR 3B return and the GSTR 2A. Learned counsel also points out that a reversal was made of Input Tax Credit from the electronic credit ledger of the petitioner to the extent of Rs.7,52,047/- on 15.02.2024. Therefore, he submits that the matter requires reconsideration.

3. Mr.V.Prashanth Kiran, learned Government Advocate, accepts notice for the respondent. In view of the petitioner's reply to the intimation, learned counsel submits that the petitioner is clearly not entitled to Input Tax Credit. Consequently, he submits that the impugned order does not contain any infirmity.

4. On perusal of the intimation and show cause notice, it is evident that the petitioner was called upon to show cause with regard to a sum of Rs.8,27,252/-, which was arrived at on the



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assumption that there was sales suppression. By contrast, the impugned order imposes tax liability of Rs.14,97,072/- and an equal amount by way of penalty. It is also clear that the impugned order does not proceed on the basis of sales suppression. If the respondent intended to modify the tax proposal in light of the petitioner's reply, a fresh show cause notice should have been issued. It is also noticeable that the petitioner's electronic credit ledger was debited to the extent of Rs.7,52,047/-. In these circumstances, the impugned order cannot be sustained.

5. Therefore, impugned order dated 23.06.2023 is set aside by leaving it open to the respondent to initiate fresh proceedings by issuing a show cause notice to the petitioner.

6. W.P.No.11030 of 2024 is disposed of on the above terms. No costs. Consequently, W.M.P.Nos.12108 and 12109 of 2024 are closed.



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Index : No

Internet : Yes

Neutral Citation: No

To

Assistant Commissioner ST FAC
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SENTHILKUMAR RAMAMOORTHY,J

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