IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.13017 of 2021
and
W.M.P.Nos.13824 and 13828 of 2021

Tvl.Tvl.Vel Enterprises,
Represented by its partner,
M.S.Viswanathan,
No.112/54-B, NA, Udaiyappa Chettiar Colony,
Shankar Nagar,
Salem 636 007. ..Petitioner

Vs.

The Assistant Commissioner (ST)
Hasthampatti Circle,
Salem. ..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the files of the respondent in GST IN 33AAHFV4659B1Z8/2017-18 dated 23.11.2020 and 11.02.2021 and quash the same.

For Petitioner : Mr.P.Rajavelu

For Respondent : Mr.V.Prashanth Kiran,
Government Advocate

ORDER

The writ petition is filed challenging the impugned order dated 23.11.2020 rejecting the petitioner's claim to transition of TDS under Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as “TNVAT Act”) to the Electronic Credit Ledger under Section 140 of TNGST Act and the Demand Notice / Summary of the Order dated 11.02.2021 in G.S.T. DRC-07.

2. The petitioner herein is engaged in the business of construction and engineering. The petitioner is registered under the Tamil Nadu Goods and Service Tax Act, 2017 (hereinafter referred to as “ TNGST Act”) bearing Registration No.33AAHFV4659B1Z8. The petitioner, being a work contractor, was subject to Tax Deduction at Source (in short “TDS”) in terms of Section 13 of the TNVAT Act. As on 30.06.2017, TDS of Rs.2,01,817/- was lying in the petitioner's account under the TNVAT Act. After availment, adjustment of ITC excess the above TDS credit was sought to be carried forward from the earlier months and was shown against the column “any refund in serial no.9(v) of Section C of Form-I return for the month of June 2017.”

3. With the introduction of Tamil Nadu Goods and Service Tax Act, the petitioner was entitled to carry forward the amount of Value Added Tax carried forward in the return relating to the period ending on the day immediately preceding 01.07.2017 i.e., introduction of GST. Accordingly, the petitioner carried forward the amount of Rs.2,01,817/- in the TRAN-1 return filed under Section 140(1) of the TNGST Act.

3.1. It is submitted by the learned counsel for the petitioner that the respondent herein vide notice dated 11.10.2018 in Ref.No.210910180000109 allegedly on the basis of defects in TRAN-1 proposed to impose interest as well as penalty and directed the petitioner herein to explain the discrepancy. The petitioner did not respond to the said notice. A notification was issued by the Government of Tamil Nadu directing that no order shall be passed until 30.11.2020. The impugned order was passed on 23.11.2020, the impugned order having been passed prior, the same cannot be sustained inasmuch as it is contrary to the G.O.Ms.No.133 dated 02.09.2020.

4. It was submitted by the learned counsel for the respondent that the petitioner has not furnished Form T before the Assessing Authority and

therefore, the impugned orders for denying the transition of TDS are justified.

5. The learned counsel for the petitioner, on the other hand would would submit that they have the Form-T Certificate and may be granted an opportunity to furnish the same before the Assessing Authority.

6. The learned counsel for the respondent as well as the petitioner would submit that the issue as to the entitlement to a TDS transition stands resolved by the Division Bench of this Court in W.P.Nos.9991 of 2020 etc., dated 26.02.2021. It is further submitted that a review was filed and the same was rejected vide order dated 02.12.2022 in W.P.Nos.2601 of 2020 etc.

7. The denial of transition of TDS being denied only for want of Form T Certificate, the request for opportunity was not seriously objected to by the learned counsel for the respondent.

8. This Court is thus of the view that the matter may be remanded back to the Assessing Authority to re-examine the issues, it is open to the petitioner to furnish all the relevant documents within a period of 4 weeks

from the date of receipt of a copy of this order. The respondent shall decide the matter keeping in view the judgment of this Court referred to above.

9. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

19.01.2024

Speaking (or) Non Speaking Order
Index:Yes/No
Neutral Citation: Yes/No
shk

To
The Assistant Commissioner (ST)
Hasthampatti Circle,
Salem.

MOHAMMED SHAFFIQ, J.

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