IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.04.2024

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN
AND
THE HON'BLE Mr. JUSTICE MOHAMMED SHAFFIQ

W.A.No.1270 of 2024
AND
C.M.P.No.9261 of 2024

M/s.Malar International
Rep. by its Partner Kalpana
No.8/4, Kumbakonam Road, Panikankuppam
Panruti-607 106 .. Appellant

Vs.

The Deputy State Tax Officer-1
Panruti Town
Cuddalore
Tamil Nadu .. Respondent

Writ Appeal filed under Clause 15 of Letters Patent, against the order dated 05.01.2024 passed in W.P.No.198 of 2024.

For Appellant : Mr.S.Kannan

For Respondent : Mr.M.Venkateswaran
Special Government Pleader

JUDGMENT

(Judgment of the court was delivered by R. MAHADEVAN, J.)

Mr.M.Venkateswaran, learned Special Government Pleader, takes notice for the respondent.

2. This writ appeal arises from the order dated 05.01.2024 passed by the learned Judge in W.P.No.198 of 2024.

3. The appellant/assessee had filed the aforesaid writ petition praying for issuance of a writ of certiorari, to quash the proceedings dated 12.09.2023 of the respondent in GSTIN:33ABHFM4168K1ZO for the financial year 2020-2021.

4. The case in brief is that the respondent issued a show cause notice dated 03.02.2023 to the appellant/assessee with respect to the purchases from one of the suppliers *viz*., Siba Ando Private Limited which was non-existent at their registered place of business and also proposed to levy penalty to the tune of Rs.15,22,652/-. In response, the appellant/assessee filed its reply on 06.03.2023, enclosing all the required documents, such as, invoices, bank statement for payment effected, lorry receipts and e-way bills and sought to revoke the penalty proceedings. However, the respondent passed the order dated 12.09.2023, confirming the proposed penalty under Section 122(i)(ii) and 122(i)(vii) of the CGST Act / TNGST Act, 2017, challenging which, the appellant/assessee filed W.P.No.198 of 2024. The learned Judge, by order dated

05.01.2024, dismissed the said writ petition, observing that the appellant shall avail of the statutory remedy. Feeling aggrieved, the appellant/assessee has filed the present writ appeal.

5. Heard Mr.S.Kannan, learned counsel for the appellant/assessee, who submitted that as per section 16 of the TNGST Act, 2017, the tax payer has to produce the documents related to delivery of purchase, E-way bill and lorry receipt and accordingly, the appellant had enclosed all the necessary documents along with DRC 06. The respondent, without properly considering the reply along with the documents, submitted by the appellant, had passed the order impugned in the writ petition. It is also submitted that the existence of alternative remedy is not an absolute bar on the maintainability of the writ petition. However, the learned Judge erroneously dismissed the writ petition on the ground of availability of alternative statutory remedy.

6. It is seen from the documents enclosed in the typed set of papers that the claim of the appellant seeking input tax credit was rejected by the assessing officer, while passing the assessment order. Whether such rejection is correct, is the question of facts and the same cannot be adjudicated in the writ petition filed under Article 226 of the Constitution of India, as rightly pointed out by the

learned Judge. Therefore, we find no reason to interfere with the order passed by the learned Judge in the writ petition filed by the appellant / assessee.

7. At this juncture, the learned counsel for the appellant seeks time for filing a statutory appeal before the appellate authority.

8. In view of the above, this court grants six weeks time from the date of receipt of a copy of this judgment, to the appellant to approach the appellate authority, as observed by the learned Judge. Accordingly, this writ appeal stands disposed of. No costs. Connected miscellaneous petition is closed.

[R.M.D, J.] [M.S.Q, J.]
25.04.2024

Neutral Citation : Yes/No
gya

To
The Deputy State Tax Officer-1
Panruti Town
Cuddalore
Tamil Nadu

R. MAHADEVAN, J.
AND
MOHAMMED SHAFFIQ, J.

gya

W.A.No.1270 of 2024

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