IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.01.2024

CORAM

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE Mr.JUSTICE MOHAMMED SHAFFIQ

W.A.Nos.165 & 167 of 2024
and C.M.P.Nos.965 & 971 of 2024

M/s.Sakthi Agencies represented by
its Proprietor Sureshkumar Lalitha,
2/112, 1-6, Dhanavarshini Avenue,
Andipalayam, Tiruppur – 641687. ... Appellant in both cases

Vs.

1.Deputy Commercial Tax Officer,
Tiruppur Central – II Circle, Tiruppur – 2,
Tiruppur – 641 602.

2.Deputy State Tax Officer - I,
Tiruppur Central – II Circle,
Tiruppur – 2.

3.Deputy State Tax Officer (Circle),
Tiruppur Central – II (C),
Commercial Taxes Department. ... Respondents in both cases

Common Prayer: Writ Appeals filed under Clause 15 of Letters Patent praying to set aside the orders dated 08.08.2023 passed in W.P.Nos.23171 & 23175 of 2023, respectively.

For Appellant
in both cases : Mr.N.V.Balaji

For Respondents
in both cases : Mr.Prashanth Kiran
Government Advocate

COMMON JUDGMENT

[Judgment of the Court was made by R.MAHADEVAN, J.]

Challenging the orders dated 08.08.2023 passed in WP. Nos. 23171 and 23175 of 2023, respectively, the appellant / assessee has preferred the present appeals.

2.According to the appellant, they are engaged in the business of copper waste and scrap, waste and scrap of primary cells, primary batteries and electric accumulators and are registered under the Central Goods and Service Tax Act, 2017 and the Tamil Nadu Goods and Services Tax Act,

2017. In respect of the Assessment Years 2020-21 and 2021-22, the respondent authorities initiated proceedings under section 74 of the Act, against the appellant for wrong availment of Input Tax Credit (ITC). Consequently, they passed orders on 28.01.2023 holding that the appellant has availed/ utilized/ claimed ineligible ITC in respect of inward supplies received from non-existent tax payers/ suppliers, who were not conducting any business from the place, for which, they have obtained registration and that, ITC was claimed without actual receipt of goods under Rule 86A of the CGST Rules. Aggrieved by the same, the appellant preferred writ petitions viz., WP. Nos. 23171 and 23175 of 2023, by contending that there were no allegations of fraud, wilful mis-statement or suppression of facts to evade tax, which is a condition precedent for initiating the proceedings under section 74 of the Act; that, Rule 86A does not entitle the respondents to initiate the said proceedings; and that, the entire proceedings are without jurisdiction and in violation of the principles of natural justice. However, the learned Judge dismissed the said writ petitions, by granting liberty to the appellant to file statutory appeals under section 107 of the CGST/SGST Act, 2017, before the Appellate Commissioner, within a period of 15 days.

Challenging the order so passed by the learned Judge, the appellant is before this court with the present appeals.

3.When the appeals were taken up for consideration, after making some arguments, the learned counsel for the appellant ultimately, submitted that it would suffice, if the appellant is granted liberty to file statutory appeals before the appellate authority within a period of four weeks from the date of receipt of a copy of this judgment.

4.Granting such liberty to the appellant, both the appeals stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
12.01.2024

Index: Yes / No
Speaking order/ Non-speaking order
Neutral Citation: Yes / No
nsd

To

1.Deputy Commercial Tax Officer,
Tiruppur Central – II Circle, Tiruppur – 2,
Tiruppur – 641 602.

2.Deputy State Tax Officer - I,
Tiruppur Central – II Circle,
Tiruppur – 2.

3.Deputy State Tax Officer (Circle),
Tiruppur Central – II (C),
Commercial Taxes Department.

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

nsd

W.A.Nos.165 & 167 of 2024

12.01.2024