



W.P.(MD) No.3450 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.3450 of 2024

and

W.M.P.(MD) Nos.3429 & 3430 of 2024

Tvl.Moon Labels
Rep. by its Proprietrix,
Door No.2/246/F, S.F.No.185/3A1,
Poornima Garden East,
Kadaparai Vennaimalai Post,
Karur, Karur District,
Tamil Nadu 639 006.

... Petitioner

Vs.

- 1.The Government of India,
Rep. by its Director,
Ministry of Finance,
Department of Revenue,
Central Board of Indirect Taxes and Customs,
New Delhi – 110001.
- 2.The Government of Tamil Nadu,
Rep. by its Finance Secretary,
Fort St.George, Chennai – 600 009.
- 3.The Principal Chief Commissioner
of GST & Central Excise,
Tamil Nadu & Puducherry,
26/1, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.



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4.The State Tax Officer,
Karur-3 Assessment Circle,
Karur, Karur District.

5.The Deputy State Tax Officer – 1,
Karur-3 Assessment Circle,
Karur, Karur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records relating to the impugned order issued by the first respondent in Notification No.09/2023-Central Tax dated 31.03.2023 and consequential proceedings issued by the fourth respondent in GST No.33AGOPA2837MIZA/2017-18 dated 27.12.2023 and quashing the same insofar as extension of time limit for the financial year 2017-18 and consequential demand under Section 73(9) of TNGST and CGST Act, 2017.

For Petitioner : Mr.E.V.N.Siva

For R1 : Mr.K.Govindarajan
Deputy Solicitor General of India

For R2 to R5 : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

In this Writ Petition, the petitioner has challenged the impugned order dated 27.12.2023 passed by the fourth respondent for the Assessment Year 2017-2018 and also the impugned Notification No. 09/2023-Central Tax, dated 31.03.2023 issued by the first respondent.



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2. At the outset, the learned counsel for the petitioner has given up the prayer for quashing the impugned Notification No.09/2023-Central Tax, dated 31.03.2023 issued by the first respondent.

3. The dispute has arisen during the first year of implementation of the respective GST enactments with effect from 01.07.2017. The petitioner claims that the petitioner had unutilized the input tax credit under the provisions of the Tamil Nadu Value Added Tax Act, 2006 as on 30.06.2017 being the late date, on which, the said Act was applicable to the petitioner as on the following date, the respective GST enactments were implemented and rolled out.

4. The petitioner claims that it was entitled to transition of input tax credit lying unutilized in its VAT returns as on 30.06.2017 in terms of Section 140 of the respective GST enactments.

5. Instead of filing necessary declaration in Form TRANS-01 as is required under Section 140 of the TNGST Act, 2017 read with Rule 117 of the TNGST Rules, 2017, the petitioner straightway proceeded to reflect



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the input tax credit that was lying in its VAT Returns, in the monthly returns in Form GSTR-3B. The VAT Returns of the petitioner have also been uploaded by the petitioner on the website of the Commercial Tax Department subsequently on 04.12.2017. The petitioner proceeded to utilize the aforesaid credit to discharge its tax liability under the TNGST Act, 2017 which has sought to be denied to the petitioner.

6. The learned counsel for the petitioner has placed reliance on the decision of the Principal Bench of this Court rendered in **M/s.Sri Renga Timbers Vs. The Assistant Commissioner (ST) (FAC) and another**, *vide* order dated 17.08.2023 in W.P.No.22854 of 2023.

7. This Writ Petition is opposed by both the learned Deputy Solicitor General of India for the first respondent and the learned Additional Government Pleader for the second to fifth respondents on the ground that this Writ Petition is liable to be dismissed.

8. The learned Additional Government Pleader for the second to fifth respondents submitted that the petitioner is not entitled to straightway avail input tax credit by reflecting the same in the monthly



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returns in Form GSTR-3B by bypassing the procedure prescribed under Section 140 of the TNGST Act, 2017 read with Rule 117 of the TNGST Rules, 2017 and therefore prayed for dismissal of this Writ Petition.

9. I have considered the arguments advanced by the learned counsel for the petitioner, the learned Deputy Solicitor General of India for the first respondent and the learned Additional Government Pleader for the second to fifth respondents.

10. In my view, the credit that was availed by the petitioner under the provisions of the TNVAT Act, 2006 was to be allowed subject to the petitioner complying with the requirements of Section 140 of the TNGST Act, 2017 read with Rule 117 of the TNGST Rules, 2017.

11. The credits that are availed under the provisions of the TNVAT Act, 2006 are indefeasible in nature. In this connection, I wish to place reliance on the decision of the Hon'ble Supreme Court in **Collector of Central Excise, Pune and others Vs. Dai Ichi Karkaria Ltd. and others**, 1999 (7) SCC 448 : (1999) 112 ELT 353, wherein, the Hon'ble Supreme Court while dealing with the provisions of the Central Excise



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Rules, 1944 in the context of CENVAT Credit Rules/MODVAT Credit Rules, held that once the credit is validly availed, it is indefeasible unless provided to lapse under the law and that credits availed under the provisions of the erstwhile Central Excise Act, 1944 and Central Excise Rules, 1944 are indefeasible and are intended to reduce the cascading effect of the tax to benefit the consumers. The Court held as follows:-

"18. It is clear from these rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgment thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the rules which provides for a reversal of the credit by the Excise Authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no correlation of the raw material and the final product; that is to say, it is not as if credit can be



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taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available."

12. Thus, the input tax credit that was availed by the petitioner under the provisions of TNVAT Act, 2006 is indefeasible and if it is not allowed to be utilized for discharging the tax liability under TNGST Act, 2017 or CGST Act, 2017 or IGST Act, 2017, as the case may be, it has to be refunded back unless the provisions itself provide for lapsing of such credits. There are no provisions that have been brought to my knowledge which indicate that such credit would lapse.

13. The provisions of Section 54 of the TNGST Act, 2017 also do not provide for the refund of such unutilized input tax credit that was not transitioned under Section 140 of the TNGST Act, 2017. Be that as it may, the petitioner cannot be made to suffer if the credit was validly availed.



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14. Therefore, I am of the view that the impugned order can be set aside for verification as to whether the petitioner had validly availed input tax credit under the provisions of the TNVAT Act, 2006 and the credit availed by the petitioner satisfied the requirements of Section 19 of the TNVAT Act, 2006 read with relevant Rules. With the above liberty, the impugned order is set aside and the case is remitted back to the fourth respondent to pass a fresh order on merits.

15. The fourth respondent is directed to call upon the petitioner to produce all original invoices based on which the input tax credit was availed. Thereafter, on verification, the fourth respondent can come to a conclusion as to whether the petitioner was entitled to transition the input tax credit under Section 140 of the TNGST Act, 2017. If the petitioner was indeed entitled to transition such amounts under Section 140 of the TNGST Act, 2017, such credit may be allowed to be set off against the tax liability as procedural infraction in transitioning the credit should not be denied.

16. In this connection, I would like to place reliance on the decision of the Hon'ble Supreme Court in **Commissioner of Sales Tax, Uttar**



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Pradesh Vs. Auriaya Chamber of Commerce, Allahabad, 1986 (3)

WEB COUNCIL : (1986) 25 ELT 867, wherein, it has been held that the rules or procedures are hand-maids of justice not its mistress. Relevant paragraph reads as under:-

“29. It is true that except special provisions indicated before, there is no specific provision which prescribes a procedure for applying for refund in such a case. But the rules or procedures are handmaids of justice not its mistress. It is apparent in the scheme of the Act that sales tax is leviable only on valid transaction. If excess amount is realised, refund is also contemplated by the scheme of the Act. In this case undoubtedly sales tax on forward contracts have been illegally recovered on a mistaken view of law. The same is lying with the government. The assessee or the dealer has claimed for the refund in the revision. In certain circumstances refund specifically has been mentioned. There is no prohibition against refund except the prohibition of two years under the proviso of Section 29. In this case that two years prohibition is not applicable because the law was declared by this Court in Budh Prakash Jai Prakash case [AIR 1954 SC 459 : (1955) 1 SCR 243 : (1954) 5 STC 193] on May 3, 1954 and the revision was filed in 1955 and it was dismissed in 1958 on the ground that it had been filed after a long delay. Thereafter the assessee had filed an application before the Sales Tax Officer for refund. The refund was claimed for the first time on May 24, 1959. The Sales Tax Officer had dismissed the application by barred by limitation under Article 96 of the First Schedule of the Indian Limitation Act, 1908.”



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17. Accordingly, this Writ Petition stands partly allowed with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order / Non-Speaking Order

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Copy To:

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Ministry of Finance,
Department of Revenue,
Central Board of Indirect Taxes and Customs,
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C.SARAVANAN, J.

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