BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.06.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) No.4963 of 2021
and
W.M.P.(MD) No.4028 of 2021

Tvl.Aswath Saw Mill,
represented by its Proprietor,
S.Magudhu Meeran ... Petitioner

/vs./

1.The Commissioner of Commercial Taxes,
O/o. the Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005.

2.The State Tax Officer,
Sengottai Assessment Circle,
Commercial Taxes Office,
No.126, Main Road,
Sengottai 627 810.

3.The Appellate Deputy Commissioner (Appeals),
Tirunelveli.
(R3 has been suo motu impleaded vide order dated 19.06.2024) ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for records pertaining to the impugned order of the 2nd respondent in GSTIN.33ADAPM4703D1Z8/2019-20 dated 31/01/2020 and quash the same.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The petitioner has challenged the impugned order dated 31.01.2020 passed by the second respondent/the State Tax Officer. The impugned order precedes the notice issued to the petitioner in ASMT – 10 dated 07.01.2020 as also the intimation in DRC -01A as also the notice in DRC 01. The petitioner has replied to the same.

2.The case of the petitioner is that the petitioner had made wrong credit entry of Rs.76,18,870/- during the month of April, 2019 instead of Rs. 38,09,435/-. It is submitted that the mistake was rectified by the petitioner in the returns filed by the petitioner in GSTR 3B for the month of May, 2019. Thus, it is submitted that the discrepancy, if any, stood rectified.

3.The learned counsel for the petitioner would draw attention to the fact that there was sufficient balance of ITC of IGST during the month of May, 2019 for a sum of Rs.16,20,059/- and therefore, the tax liability of the petitioner for the month of April, as far as IGST liability is concerned, was fully discharged out of Rs.16,20,059 + 38,09,435/-.

4.It is submitted that the balance amount for a sum of Rs.38,09,435/- was not availed in GSTR 3B. It is submitted that the second respondent has confirmed the demand based on the wrong interpretation of the data furnished by the petitioner in the reply.

5.The petitioner has drawn attention to the calculations, as far as the tax liability of the petitioner is concerned, *qua* IGST as also CGST, in paragraph 12 of the affidavit filed in support of the present writ petition, which reads as under:-

> *"12.It is pertinent to note here that, as extracted by the 2nd Respondent in the impugned order, even if the correct figure of Rs. 38,09,435/- is claimed as ITC in the head of IGST during the month of April 2019, excess claim of ITC will be there and no tax shall be balance payable and hence no revenue loss or belated payment of tax is there. The relevant calculation is as follows:*

	IGST	***CGST***	***SGST***
ITC C/f	*16,12,059*	*......*	*.......*
ii) ITC April	*38,09,435*	*7,53,965*	*7,53,965*
iii) Total	*54,21,494*	*7,53,965*	*7,53,965*
Iv) Liability	*9,34,008*	*24,49,259*	*24,49,259*
v) Adjustment From IGST-	*9,34,008*	*24,49,259*	*20,38,227*
vi) Adjustment CGST/SGST-	*NA*	*Nil*	*4,11,032*
vii) Total (v+vi)	*-9,34,008*	*24,49,259*	*24,49,259*
Excess	*Nil*	*+7,53,965*	*+3,42,933"*

6.Defending the impugned order, the learned Additional Government Pleader for the respondent would submit that the impugned order is dated 31.01.2020, whereas the present writ petition has been filed on 03.03.2021. It is therefore submitted that the writ petition is liable to be dismissed on account of laches, in view of the judgment of the Hon'ble Supreme Court in ***Assistant Commissioner (CT) LTU, Kakinada and others Vs. Glaxo Smith Kline Consumer Health Care Limited*** reported in ***2020 SCC Online SC 440***.

7.That apart, it is submitted that even otherwise, the appeal before the Appellate Commissioner would have been time barred on the date of filing of the present writ petition on 03.03.2021. It is therefore submitted that the present writ petition is also liable to be dismissed.

8.In paragraph 5 of the counter, it has been stated as follows:

5. I submit that on further verification of the returns filed for the month of April 2019 to June 2019 as per the statement of the taxpayer he had wrongly availed Input Tax Credit of Rs. 38,09,435/- under IGST head which leads to the short payment of tax due . Sec. 42(6) *of the TNGST ACT 2017 reads as The amount claimed as input tax credit that is found to be excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.*

Based on the reply of the taxpayer the calculation of ITC availment,tax due and availment of Input Tax Credit has been made as detailed below:-

Statement Input TaxCredit and output liabilities (From April 2019 to June 2019) In the circumstances of the double claim of Rs.38,09,435/- has not been taken)

Month	Input Opening Balance			Input availed as 3B			Total ITC available		
	IGST	CGST	SGST	IGST	CGST	SGST	IGST	CGST	SGST
Apr-18	[illegible]	0	0	[illegible]	[illegible]	753885	5421494	[illegible]	753855
May-19	0	[illegible]	342032	627217	832088	837663	627217	[illegible]	1176595
Jun-18	0	0	0	[illegible]	57308	57308	2614562	57308	57308

output Tax Due				Adjusted in ITC			Balance ITC available		
IGST	CGST	SGST	Total	IGST	CGST	SGST	IGST	CGST	SGST
934008	2449259	2449259	5832526	5421494	0	411032	0	753965	342933
974971	2617485	2617485	6209941	627217	1586631	1175599	0	0	0
1032418	1755255	1755255	4542928	1032418	1639452	57308	0	0	0

	Tax payable			
Month	IGST	CGST	SGST	
April 2019	0	0	0	0
May 2019	347754	1030854	1441886	2820494
June 2019	0	115803	1697947	1813750
Total Tax payable	347754	1146657	3139833	4634244

9.It is therefore submitted that as per the calculation of the petitioner, the tax amount is Rs.46,34,244/-. However, the petitioner has not paid the balance amount. Hence, he prays that the writ petition be dismissed.

10.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

11.I am of the view that the writ petition challenging the impugned order belatedly long after the order was passed, was not maintainable.

12.Be that as it may, the petitioner may have a case for proper explanation before the Appellate Commissioner under Section 107 of the TNGST Act, 2017. Therefore, the Appellate Authority, namely, the Appellate Deputy Commissioner (Appeals), Tirunelveli, is *suo motu* impleaded as third respondent.

13.The petitioner is directed to file a statutory appeal under Section 107 of the TNGST Act, 2017 before the third respondent within a period of 30 days from the date of receipt of a copy of this order. The third respondent shall consider and dispose of the appeal to be filed by the petitioner within such period without reference to the limitation on merits and in accordance with law within a period of 5 months thereafter. It is needless to state that the petitioner shall pre-deposit the amount as per Section 107 of the TNGST Act, 2017. The petitioner shall also be heard before fresh order is passed.

14.With the above liberty, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes / No

19.06.2024

To

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Commercial Taxes,
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C.SARAVANAN, J.

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