BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.09.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.7102 of 2024
and
W.M.P(MD)No.6558 of 2024

Tvl.Sri Sainiveda Enterprises,
Represented by its Proprietrix,
S.Umarajeshwari. ... Petitioner

Vs.

1.The Appellate Deputy Commissioner (ST),
Goods and Services Tax,
Trichy-1.

2.The State Tax Officer,
Pudukottai II Assessment Circle,
Pudukottai. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned proceedings issued by the first respondent in Appeal No. & Year: AP/GST/221/2023, dated 18.12.2023 and quash the same as illegal, in gross violation of the principles of Natural justice and further direct the second respondent to revoke the blocked Input Tax Credit and pass such further or other orders as this Court.

For Petitioner : M/s.K.Sankaranarayanan

For Respondents : Mr.J.K.Jayaselan
Government Advocate

ORDER

The present writ petition has been filed challenging the order of the Appellate Deputy Commissioner in Appeal No. & Year: AP/GST/221/2023, dated 18.12.2023, whereby the order of adjudication, dated 17.10.2023 was affirmed.

2. The petitioner is engaged in the business of fabrication and trading in steel and iron products, supplying products as per the work order placed on him by various State Government Departments and others. Inspection was conducted at petitioner's business premises under Section 67 of the Tamil Nadu Goods and Service Act, 2017. During the course of inspection, it was found that the petitioner had claimed Input Tax Credit in respect of transactions allegedly made with M/s.Star Agencies bearing GSTIN:33EIYPP6552A1ZX, which was found to be non existent and involved in bill trading. Thus, the Input Tax Credit claimed / availed by the petitioner in respect of the transactions with M/s.Star Agencies was reversed and penalty was levied under Section 122 of the TNGST Act, vide order of adjudication, dated 18.12.2023. Aggrieved by the same, the petitioner preferred an appeal before the first respondent. During the course of hearing before the first respondent, the petitioner submitted detailed written submission and had also furnished copies of tax invoices supplied by the sellers. It was submitted that the contracts were between the petitioner and the Government Department / Local bodies and copies of the bank account statements showing the payment made to Star Agencies was also placed for consideration. It was submitted that on the strength of the evidence produced, the following facts were established, viz.,:

> *"i) Receipt of goods from M/s.Star Agencies, Pudukkottai.*
>
> *ii) Payment made to M/s.Star Agencies, Pudukkotai for such receipts.*
>
> *iii) Supply of goods and services to Government agencies manufactured out of such goods and*
>
> *iv) Payment receipts for such supply from Government agencies."*

3. The Appellate Authority, after extracting the submissions made, had proceeded to extract Section 138 A of the GST Act and Rule 55 of GST Rules and further referred to the judgment of the Hon'ble Supreme Court rendered in the context of Section 70 of the Karnataka Value Added Tax Act, 2003, in the case of ***State of Karnataka Vs. M/s.Ecom Gill Coffee Trading Private Limited [Civil Appeal No.230,*** decided on ***13.03.2023]*** and Patna High Court in the case of ***M/s.Astha Enterprises Vs. State of Bihar*** and thereafter, proceeded to extract Section 155 of the TNGST Act, 2017 and held that the recipient i.e., the petitioner herein has not received the goods or services or both. There is no reference whatsoever to the written submission which was filed by the petitioner on 08.09.2023 and on 17.10.2023 nor to the certificate issued by M/s.Star Agencies for supply of goods and payment of taxes.

4. It may be relevant to note that the Appellate Authority has in fact recorded that the petitioner has submitted tax invoice and payment details, and found the same is not sufficient. The impugned order is challenged on the ground of non-application of mind and that it suffers from the vice of being a non-speaking order. The relevant portion of the impugned order is extracted hereunder:

> ***"As per Section 155 of the TNGST Act 2017: Burden of proof:*** *When any person claims that he is*

eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

Eligibility and conditions for taking input tax credit:

As per Section 16(2) (b) of the TNGST Act 2017:

Recipient has received the goods or services or both.

For all the aforesaid reasons and as the appellant has ineligible to claim the input tax credit amount of Rs.5,93,274/- under CGST and Rs.5,93,274/- under SGST as per Section 16(2)(b) of the TNGST Act, 2017. Hence, the order passed by the State Tax Officer, Pudukkottai-2 Assessment Circle in Reference No.ZD330223069447F, Dated:15.02.2023 Levy Tax under CGST Rs.5,93,274/-, SGST Rs.5,93,274/- and penalty under CGST Rs.5,93,274/- SGST, Rs.5,93,274/- is sustained.

Thus the appeal is ***dismissed*** *on the terms aforesaid."*

5. On perusal of the impugned order, this Court finds that there is merit in the submission of the learned Counsel for the petitioner that the impugned order of the Appellate Authority appears to suffer from non-application of mind to the written submission, which was filed by the petitioner. The learned Government Advocate for the respondent would submit that the burden of proof in terms of Section 155 of the TNGST Act was on the claimant and it is up to the petitioner to demonstrate on the basis of documents that they are entitled to Input Tax Credit. He would further submit that in view of the fact that the Appellate Authority has not dealt with the written submission, the matters may be remanded back to the Appellate Authority for fresh consideration after granting the petitioner a reasonable opportunity of hearing, which was acceded to by the learned Counsel for the petitioner.

6. In view thereof, the impugned order of the first respondent is set aside. The first respondent is directed to re-hear the appeal and pass fresh orders after granting the petitioner a reasonable opportunity of hearing and applying his mind to the materials that may be submitted by the petitioner herein.

7. The writ petition stands disposed of on the above terms. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

04.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The Appellate Deputy Commissioner (ST),
Goods and Services Tax,
Trichy-1.

2.The State Tax Officer,
Pudukottai II Assessment Circle,
Pudukottai.

MOHAMMED SHAFFIQ, J.

BTR

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