BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.10034 of 2023
and
W.M.P.(MD)No.8797 of 2023

Tvl.T.S.R.Trading Company,
Represented by its Proprietor,
T.Sahid Ahamed ... 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 Deputy Commercial Tax Officer/
The Deputy State Tax Officer – 2,
Dindigul Town Assessment Circle,
Commercial Taxes Office,
Deputy Collector Office Road,
Dindigul – 624 201. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the second respondent in Order No. 33EYHPS0007L1ZE/2021-22 dated 20.03.2023 and quash the same.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.T.Amjadkhan
Government Advocate

O R D E R

This Writ Petition is filed challenging the impugned order dated 20.03.2023 for the period 2021-22 on the premise that the denial of the Input Tax Credit on the ground that the petitioner has not received any goods from the alleged supplier is in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in trading of paper board waste etc. and registered under GST Act. The petitioner, for the period in dispute ie., 2021-22, has filed its returns reporting a total taxable value of Rs.1,64,85,795/- in GSTR-3B. The petitioner claimed Input Tax Credit on the alleged supplies received from one Tvl.Thirumuruga Traders bearing Registration in GSTIN 33PZZPG2948G2ZX. The claim of ITC made by the petitioner on such supplies was rejected vide impugned order dated 20.03.2023 on the premise that Tvl.Thirumuruga Traders is a bill trader and that there were no actual movement of goods supported by E way bills thus the claim of the Input Tax Credit is illegal.

3. The petitioner would submit that purchases of the following materials were effected from Tvl.Thirumuruga Traders:

SI No.	*HSN Code*	*Description*
1.	*48*	*(waste and scrap) paper or paperboard*
2.	*4004*	*Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom*
3.	*41*	*Raw hides and skins (other than furskins) and leather*
4.	*28*	*Inorganic chemicals, organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive*

3.1. In response to Form DRC 01A dated 04.08.2022, the petitioner filed its objection vide letters dated 28.11.2022 and 04.02.2023 *inter alia* highlighting the following:

a. The purchases from Tvl.Thirumuruga Traders is supported by original purchase invoice.

b. Consideration for such supplies are made.

c. Transaction are auto populated in GSTR 2A filed by the said supplier i.e., Tvl.Thirumuruga Traders.

4. In response to the notice in DRC-01, the petitioner submitted vide reply dated 04.02.2023 *inter alia* the following:

a) The supplies in respect of which Input Tax Credit is sought to be rejected, are made from Tvl.Thirumuruga Traders, Dindigul, the petitioner purchased from the registered suppliers. The claim of the Input Tax Credit was supported by original purchase invoices and the supplies were also supported by consideration which was made by the petitioner to the suppliers.

b) The transaction was also reflected in GSTR 01 by the suppliers and was auto-populated in the petitioner's GSTR-2A .

c) If for any reason, the transactions are found to be in contravention of any provision of the GST Act, the authorities ought to proceed against the suppliers and cannot deny the petitioner the Input Tax Credit. That non payment or non filing of return by the supplier cannot be a reason to reject the petitioner's claim of Input Tax Credit or fasten the liability on the petitioner. Reliance was sought to be placed on the following judgments:

(i) ***Sri Vinayaga Agencies v. Assistant Commissioner (CT), Vadapalani-1 Assessment Circle, Chennai*** *reported in* ***(2013) 60 VST 283***

(Mad).

(ii) ***Althaf Shoes (P) Ltd. Vs. Assistant Commissioner (CT) Valluvarkottam Assessment Circle Chennai*** reported in ***(2012) 50 VST 179 (Mad).***

(iii) ***Gheru Lal Bal Chand Vs. State of Haryana*** reported in ***(2011) 45 VST 195***.

(iv) ***Infinite Wholesale Limited Vs Assistant Commissioner (CT), W.P. 9265/2013 dated 06.11.2014*** reported in ***82 VST 457.***

d) Without prejudice to the entitlement to Input Tax Credit with regard to the transaction between the petitioner and Tvl.Thirumuruga Traders, the petitioner may be furnished with the reasons based on which Tvl.Thirumuruga Traders are stated to be bill traders. The petitioner had prayed for cross examination, placing reliance upon the following judgments of the Hon'ble Supreme Court:

(i) State of Kerala Vs K.T.Shaduli Grocery Dealer reported in (1977) 39 STC 478,

(ii) T.M.Rajaganapathi Traders VS. Commercial Tax Officer, Salem reported in (2005) 142 STC 130,

e) Personal hearing was also sought for by the petitioner placing reliance upon ***Asia L.P.G. Pvt. Ltd. vs State Of Karnataka And Others*** *reported in* ***(1997) 107 STC 29.***

f) Reliance was also placed on press release by the Central Board of GST counsel dated 04.05.2018, wherein it has been stated that there would not be automatic reversal of Input Tax Credit on the ground of non payment of tax by the supplier and that default in payment of taxes shall be recovered from the supplier except in those cases where the supplier is found to be missing or closure of business by the supplier or supplier does not have adequate assets. In the present case, the supplier being a registered dealer, it is submitted that it does not fall within the exception laid down vide the above press release.

5. On receipt of the above reply, the respondent authorities found that the taxable person viz., Tvl.Thirumuruga Traders was not having any business at the registered place of business and it was also found that they effected a huge amount of outward supplies without having any inward supplies. They had also not effected any GST cash payment and had adjusted the fake/irrelevant ITC towards their output tax liabilities. The petitioner herein could not have received any goods thus, the petitioner was not eligible to claim Input Tax

Credit. In view thereof, the proposals stood confirmed and the present Writ Petition is filed against the order of the above assessment.

6. It is trite law that Input Tax Credit is in the nature of concession and conditions attached thereto ought to be strictly complied with. Importantly, Section 16 of the Act *interalia* provides the following conditions for a recipient / taxable person to be entitled to Input Tax Credit viz.,

a) the claimant must be in possession of tax invoices or debit note.

b) the claimant must have received the goods or services or both.

c) the tax charged in respect of the supply with regard to which Input Tax Credit is claimed ought to be paid to the Government by the supplier.

d) the supplier must have furnished the return under Section 39 of the Act

These conditions ought to be strictly complied with.

7. It is stated in the impugned order that there was no supply of goods or service or both by the supplier viz., Tvl.Thirumuruga Traders to the petitioner, the transactions cannot be genuine as they were based on tax invoices issued without actual receipt of goods or service or both and any claim of Input Tax Credit on the basis of the such transactions cannot be sustained.

8. The other issue relates to omission of outward and inward E-way bills from the accounts. In response, it was submitted by the learned counsel for the petitioner that it is the duty of the supplier to generate E-way bills for the inward supply. Regarding the outward supply, it was submitted that the E-way bill may not be generated for a variety of reasons *inter alia* including the movements by non-motorized vehicles (or) the movement of goods valued below threshold limit. It is also submitted by the learned counsel for the petitioner that there are no difference in GSTR-3B and E-way bills and that there is no proof of bill Trading. Thus, the proposal to levy tax or penalty is without jurisdiction. The respondent authority rejected these submissions on the ground that the submissions were not supported by any documentary evidence.

9. The question whether a supplier is existing or not, is a disputed question of fact which ought to be decided on the basis of evidence adduced by both assessee as well as the revenue. The examination of such disputed question of facts is foreign to jurisdiction under Article 226 of the Constitution. The impugned order proceeds to reject the petitioner's reply in respect of omissions to generate E-way bills of inward/ outward supply for want of evidence. It is well settled that adequacy or inadequacy or sufficiency of

evidence cannot be gone into under Article 226 of the Constitution of India.

10. In view thereof, the challenge to the order of assessment stands rejected. It is open to the petitioner to file an appeal within 2 weeks from the date of receipt of a copy of this order, subject to complying with all conditions relating to appeal, including pre-deposit, if any. If such appeal is filed within the stipulated period i.e., 2 weeks from the date of receipt of copy of this order. The same would be entertained and disposed of in accordance with law after affording the petitioner a reasonable opportunity of hearing.

11. Recording the same, the writ petition stands disposed of. No Costs. Consequently, connected miscellaneous petition is closed.

30.10.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To:

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

2.The Deputy Commercial Tax Officer/
The Deputy State Tax Officer – 2,
Dindigul Town Assessment Circle,
Commercial Taxes Office,
Deputy Collector Office Road,
Dindigul – 624 201.

MOHAMMED SHAFFIQ, J.

Nsr

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