BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.07.2024**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.16189 of 2024

A.Johnson ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Tirunelveli Town,
Tirunelveli. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the files of the respondent in Order Ref No.ZD331123097079D/ GSTIN No.33AGSPJ6505F1ZF/2017-18 dated 16.11.2023 and to quash the same as illegal, arbitrary, without jurisdiction.

For petitioner : Mr.S.Karunakar

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

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ORDER

Heard learned counsel for the petitioner and learned Additional Government Pleader for the respondent.

2. The petitioner is before this Court against the impugned order dated 16.11.2023 passed for the assessment year 2017-18 bearing reference in GSTIN: 33AGSPJ6505F1ZF/2017-18.

3. The case of the petitioner is that although the petitioner has discharged the tax liability pursuant to the impugned order, the impugned demand, that was confirmed, is unsustainable as the most of the amounts, from which, the tax has been paid pertains to the VAT period and therefore, the tax was not payable under Section 142(11)(a) of the GST Act, 2017.

4. The learned counsel for the petitioner submits that the petitioner has paid a sum of Rs.21,21,102/- pursuant to the impugned order as detailed below:

S.No	DRC03 Reference No. dated	Category	CGST paid	SGST paid	Total amount paid (in Rs.)
1.	D13310230139266/16.10.2023	TAX PAID	180200	176235	1014522
2.	D13311230017405/07.11.2023		146861	154791	
3.	DC3311230029035/07.11.2023		180200	176235	
4.	DC3310230095246/16.10.2023	Interest paid	502564	502564	1005128
5.	D1331123009/16.11.2023	Penalty paid	50726	50726	101452

5. It is submitted that later the petitioner obtained legal opinion based on the work completion certificate and the petitioner became aware of the fact that the tax was payable only for the work contracts service completed during the GST regime from 01.07.2017 to 31.03.2018.

6. It is the specific case of the petitioner that no GST has to be paid for the work completed prior to 30.06.2017 and that even if the payment was made, subsequently as per the transitional provisions, no tax was payable under GST Act, 2017.

7. The learned Additional Government Pleader for the respondent, however, stated that the petitioner has discharged the tax liability under the

provisions of the TNVAT Act, 2006 for the work contracts. Therefore, there is no merits in the submissions made by the learned counsel for the petitioner that the impugned order has to be interfered with, particularly, when the impugned order dated 16.11.2023, which has been also complied with by the petitioner on various dates by discharging the tax, interest and penalty.

8. I have considered the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

9. If it is the case of the petitioner that the petitioner was liable to pay VAT for the works contract for the period prior to 01.07.2017, it was incumbant on the part of the petitioner to have explained that the tax liability was under VAT and not GST and that the petitioner has already discharged tax liability under VAT. If there was any variance in the rate of tax, the tax can be either collected or refunded from/to the petitioner.

10. Under these circumstances, the impugned order is set aside and the case is remitted back to the respondent to pass fresh orders by allocating the amounts

due payable by the petitioner from and out of the amounts deposited, under the VAT Act and under the GST Act. The petitioner is directed to give appropriate reply enclosing a copy of the legal opinion that was ostensibly obtained by the petitioner which impelled the petitioner to file the present Writ Petition. Liberty is given to the respondent to issue suitable notice to the petitioner to recover the balance amount, if any, under the TNVAT Act, 2006.

This Writ Petition is disposed of, with above direction. No costs.

Index : Yes / No
Internet : Yes / No
apd

18.07.2024

To

The Deputy Commercial Tax Officer,
Tirunelveli Town,
Tirunelveli.

C.SARAVANAN, J.

apd

W.P.(MD) No.16189 of 2024

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