BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.08.2024

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THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).No.19771 of 2024
and
W.M.P.(MD).No.16764 of 2024

Sankarapandian Bharath ... Petitioner

Vs.

The Assistant Commissioner (ST),
Commercial Tax Building,
South High Ground Road,
Palayamkottai,
Tirunelveli. ...Respondent

<u>Prayer</u> : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records leading to the issuance of assessment order bearing reference TIN: 33245541715/2010-11 dated 10.07.2024 passed by the respondent herein and quash the same.

For Petitioner : M/s.S.P.Harini

For Respondent : Mr.R.Sureshkumar
Additional Government Pleader

ORDER

The present Writ Petition is filed challenging the impugned order dated 10.07.2024 relating to assessment year 2010-2011, whereby, the petitioner's claim of Input Tax Credit on the goods purchased from Tvl.Muthamil Agencies, was rejected on the premise that the bill copies of the said seller are without signature of the seller and contains numerous corrections, thus, the sale invoices are not in compliance with Section 2(36) of TNVAT Act read with Rule 10(2) of the TNVAT Rules.

2. The primary ground of challenge was that the impugned order traverses beyond the show cause notices dated 22.08.2013, 20.11.2015 and 13.01.2022. In the above notices, the proposal to reject the claim of Input Tax Credit was only on the premise that the seller, namely, Tvl.Muthamil Agencies, had not filed the returns for the month of January 2011, nor paid the taxes due, as could be seen from the following extracts:

(i) Show cause notice issued by the respondent dated 22.08.2013:

> *"Please take notice that the monthly return filed by you for the month of January 2011 was scrutinized and found that your seller have not filed the return for the above month and not paid tax due but you have claimed Input Tax Credit on that purchase."*

(ii) Show cause notice issued by the respondent dated 20.11.2015:

"Please take notice that on scrutiny of Your Monthly E filed return for the month of Jan.2011 it reveals that You have effected purchases from TVL.Muthamil Agencies TIN 33825565258 who have not filed any return and tax not paid. You have claimed ITC Rs.43543.00 It is contravention to Sec. 19 of TNVAT Act 2006."

(iii) Show cause notice issued by the respondent dated 13.01.2022:

"As per the above section, the selling dealer Tvl.Muthamil Agencies, TIN 33825565258 must have paid the tax due on the purchases effected by you. But the selling dealer Tvl.Muthamil Agencies have not filed return and paid tax to the department. Hence the tax due of Rs.43,543/- on the purchases turnover of Rs.3,34,344/- is proposed to be reversed."

The relevant portion of the impugned order dated 10.07.2024 is extracted hereunder, introducing new reasons for disallowance of ITC:

"..along with manual Bill copies without the signature of the supplier and with various corrections. Thus the sale invoices are not in correct manner as prescribed under Section 2(36) read with Rule 10(2) of TNVAT Act 2006."

3. Though the impugned order refers to yet another notice dated 01.07.2024, it is submitted by the learned counsel for the petitioner that no such

notice was served on the petitioner. It is further submitted that the petitioner had filed his objections to the above notices *inter alia* highlighting that they have produced all the original purchase invoices and that taxes have been paid to the seller/dealer and that the invoices are also in compliance with Section 2(36) of the TNVAT Act read with Rule 10(2) of the TNVAT Rules. Reliance was sought to be placed on the decision of this Court in the case of ***Sri Vinayaka Agencies Vs. The Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai*** reported in ***2013 60 VST 283 (Mad)***.

4. It is further submitted that the impugned order, insofar as it proceeds to reject the claim of Input Tax Credit only on the premise that the invoice copies do not bear the signature of the seller, namely, Tvl.Muthamil Agencies and that it contains corrections, thus not in compliance with Section 2(36) of the TNVAT Act read with Rule 10(2) of the TNVAT Rules, traverses beyond the show cause notices issued to the petitioner, for the above reason is set out for the first time in the impugned order, thereby denying the petitioner any opportunity to meet the same.

5. To the contrary, the learned Additional Government Pleader appearing for the respondent would submit that there is an effective statutory remedy by

way of appeal under TNVAT Act and the Writ Petition ought not to be entertained.

6. While it is trite law that normally when there is an effective alternative remedy by way of statutory appeal, Courts would exercise restraint in entertaining Writ Petitions under Article 226 of the Constitution of India. However, the rule of alternative remedy is a self-imposed restriction and there are well exceptions to the above rule. One such exception is where the action complained of is made in violation of principles of natural justice.

7. It is trite law that show cause notice forms the foundation of the order and an order, which traverses beyond the show cause notice, results in violation of principles of natural justice inasmuch as the party is denied an opportunity to put forth his case.[1] The impugned order inasmuch as it traverses beyond the show cause notice vitiates the order of assessment.

8. In view thereof, the impugned order passed by the respondent dated 10.07.2024 is set aside. The petitioner shall treat the impugned order of assessment as a show cause notice and submit his objections before the

1CCE v. Champdany Industries Ltd., (2009) 9 SCC 466; CCE v. GAIL, (2007) 15 SCC 91; CCE v. Ballarpur Industries Ltd., (2007) 8 SCC 89 respondent within a period of two (2) weeks from the date of receipt of a copy of this order. The same was agreed to by the learned counsel on either side. If any such objections are filed within the period stipulated above, i.e., two weeks from the date of receipt of a copy of this order, the respondent shall consider the same and pass orders in accordance with law, after affording an opportunity of hearing to the petitioner, within a period of six (6) weeks thereon. It is made clear that if no such objections are filed within the period stipulated above, the impugned order shall stand revived.

9. Accordingly, the Writ Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

19.08.2024

Index : Yes / No
Internet : Yes/ No
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To
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MOHAMMED SHAFFIQ, J.

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