BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

W.A(MD)No.587 of 2024
and
C.M.P(MD)No.4233 of 2024

Tvl. Devesh Spices,
Represented by its Proprietor Pechiyammal
... Appellant/Petitioner

vs.

The Assistant Commissioner (CT) (ST),
O/o.Assistant Commissioner (CT),
Theni -I Assessment Circle,
Theni,
Theni District. ... Respondent/Respondent

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 21.06.2023 in W.P(MD)No.27647 of 2022 on the file of this Court.

For Appellant : Mr.Raja.Karthikeyan

For Respondent : Mr.R.Suresh Kumar
Additional Government Pleader (Tax)

JUDGMENT

[Judgment of the Court was made by R.SURESH KUMAR, J.)

This Writ Appeal has been directed against the order passed by the Writ Court, dated 21.06.2023, made in W.P(MD)No.27647 of 2022.

2.The appellant herein was the writ petitioner, who moved the said Writ Petition to set aside the order passed by the respondent in TIN.33636424248/2016-17, dated 10.10.2019, she was a dealer in cardamom and pepper and presently registered under the provisions of the Tamil Nadu Goods and Services Tax Act, 2017 (in short 'the TNGST Act'). When that being so, she had received a notice, dated 01.02.2019, from the respondent ie., revenue, directing her to show cause and pay a wrongly carried forward credit amount of Rs.1,36,563/- along with interest.

3.Though the petitioner had given an explanation and requested the proposal to be stopped, however, the revenue, without providing a personal opportunity of hearing, based on the perusal of the documents, had passed a cryptic non-speaking order, which is the subject matter in the said Writ Petition.

4.The learned Judge, who dealt with the matter, has held that the record would show for the month ending June, 2017, the entry under the head 'excess input tax credit' at column 11 is shown as '0.00'. This fact has been captured in the impugned order. Therefore, the learned Judge has held that in the light of the said findings, the contention of the writ petitioner that she had a credit limit appears to be incorrect and accordingly, the said Writ Petition was dismissed, as against which only the present appeal has been directed.

5.However, Mr.Raja Karthikeyan, learned counsel appearing for the appellant, has pointed out that in column 10 of the return, it has been specifically mentioned that the Net Tax Payable is Rs:-1,927.00 in respect of State GST and Rs:-1,34,636.00 in respect of central GST.

6.If it is in minus, that means because of the advance tax already been paid, there has been an excess tax paid as per the self-assessment, based on which this amount has to be returned back. This amount has to be returned back, it can be adjusted by way of carry forward the same into ITC for the next year starts from 1st July, 2017.

7.However, this position seems to have not been considered in proper perspective that is the reason why only on the basis of column No.14, the revenue authorities had made a demand that the carry forward of more than Rs.1,36,563/- by the dealer is wrong, therefore, that amount has to be paid.

8.Hence the learned counsel appearing for the appellant seeks indulgence of this Court.

9.Heard Mr.R.Suresh Kumar, learned Additional Government Pleader appearing for the respondent, who also reiterated what has been held by the learned Judge stating that the 'carried forward input tax credit' since has been shown as '0.00', there has been no scope for any ITC available in the electronic ledger of the dealer concerned, therefore, the said amount of Rs.1,36,563/- carried forward by way of ITC is a wrong entry and therefore, such a claim made by the dealer cannot be accepted, that is how, a show cause notice has been issued followed by the demand which is to be justified, he contended.

10.We have considered the said rival submissions made by both sides and have perused the materials placed before this Court.

11.As has been rightly pointed out by the learned counsel appearing for the appellant that, the net tax payable on the previous year has been shown both for the State GST as well as Central GST in minus, that means, if it is zero balance nothing to be returned, if it is in minus, the tax excessively paid previously has to be returned back, therefore, the said excess payment of more than Rs.1,36,563/- have been made as a carry forward by way of ITC in the next year starting from 1st July, 2017, therefore, such a claim made by the dealer has to be considered as to whether the previous year excess tax had been by her, for which, she is entitled to get for such a credit, without going into that aspect, since the revenue has passed a cryptic order making such a demand from the dealer when it was challenged before this Court, the learned Judge also has accepted the said version of the revenue side, which in our considered view, may be erroneous.

12.In that view of the matter, we do not hesitate to hold that the order impugned passed by the learned Judge is liable to be interfered with.

13.Resultantly, the following orders are passed in this Writ Appeal:

> '(i) That the order passed by the Writ Court which is impugned herein is set aside, as a sequel the impugned order before the Writ Court, dated 21.06.2023 also is set aside.
>
> (ii) Consequently, the matter is remitted back to the respondent revenue for reconsideration, where an opportunity of being heard to be given to the appellant dealer and who can putforth her case, based on which a final decision can be taken by the revenue.'

14.With this direction, this Writ Appeal is ordered accordingly. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

[R.S.K.,J.] [G.A.M.,J.]
04.04.2024

NCC : Yes / No
Index : Yes / No
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To

The Assistant Commissioner (CT) (ST),
O/o.Assistant Commissioner (CT),
Theni -I Assessment Circle,
Theni,
Theni District.

R.SURESH KUMAR,J.
and
G.ARUL MURUGAN,J.

ps

ORDER MADE IN
W.A(MD)No.587 of 2024

DATED : 04.04.2024