IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.28388 of 2021
and
W.M.P.No.29976 of 2021

Frontline Wind Energy Private Limited,
(Represented by its Managing Director,
Mr.Chandra Moulieswaran),
No.D.No.6/264, Surya Garden,
Trichy Road,
Namakkal – 637 001. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Namakkal (Town) Circle,
Commercial Taxes Integrated Building,
Mohanur Road,
Namakkal – 637 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records on the files of the respondent herein in Unregistered dealer/2019-20 dated 26.11.2021, quash the same.

For Petitioner : Mr.N.Prasad

For Respondent : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

ORDER

The petitioner is before this Court against the impugned Assessment Order passed by the respondent for the Assessment Year 2019-2020 dated 26.11.2021. By the impugned order, the respondent has confirmed the taxable turnover of the petitioner and has computed the tax as follows:-

Taxable turnover determined		***Rs.10,34,32,205-00 @18%***
	SGST @ 9%	CGST @ 9%
Tax due	Rs.93,08,898-00	Rs.93,08,898-00
Tax paid	Rs.Nil	Rs.Nil
Balance (-)	Rs.93,08,898-00	Rs.93,08,898-00
A demand notice in Form DRC 07 is issued		
Penalty:-		
Penalty at 100% of the tax due U/s.122(1) of the Act	Rs.93,08,898-00	Rs.93,08,898-00
Paid	Rs.Nil	Rs.Nil
Balance (-)	Rs.93,08,898-00	Rs.93,08,898-00
A demand notice in Form DRC 07 is issued		

2. The specific case of the petitioner is that the petitioner had earlier purchased a Wind Electric Generator Park consisting of 20 Wind Mills as a Slump Sale under Slump Sale Agreement dated 17.04.2015 from M/s.Zuri Hotels & Resorts Private Limited. It is submitted that the business was thereafter sold to M/s.Bilal Match Works under Sale of business Agreement dated 14.06.2019 for a total sale consideration of Rs.9,50,00,000/-. The Department had issued a notice dated 09.09.2021, wherein, based on the data from the 6th Annual Report of the petitioner for the Financial Year 2019-2020 it was proposed to tax the entire amount together with further addition as detailed below:

> *"Further, verification of the 6th Annual Report for the year 2019-20, you have sold the Wind Mill machinery at Rs.10,34,32,205-00 (Cost of machinery Rs.5,64,43,519+profit on sale of machinery Rs.4,69,88,686-00) which is liable to pay tax @ 18% under TNGST Act, 2019."*

3. It is submitted that after the petitioner was replied to the said Notice dated 09.09.2021, a further Notice was issued on 21.10.2021, wherein, the respondent had admitted the petitioner was not liable to pay tax on the entire sale consideration for the sale of a business for a sum of

Rs.9,50,00,000/-. However, wanted to tax the differential amount of Rs.84,32,205/- to which the petitioner had replied. However, in the impugned order, the respondent has confirmed the demand on the entire amount of Rs.10,34,32,205/- which was the data obtained from the 6th Annual Report of the petitioner for the Financial Year 2019-2020. It is submitted that there is no legal basis for sustaining the demand and there is a complete arbitrariness in the impugned order.

4. The learned Government Advocate for the respondent on the other hand would submit that the impugned order does not suffer from any irregularity. It is submitted that the petitioner has an alternate remedy under Section 107 of the GST Act before the Appellate Authority and therefore prays for dismissal of the writ petition.

5. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent.

6. The impugned demand is clearly contrary to the discussion and

proposal in the 2nd mentioned Notice dated 21.10.2021, wherein, there is a categorical admission that a sum of Rs.9,50,00,000/- was not exigible. Relevant portion from the said Notice reads as under:

> "*Any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course of furtherance of his business immediately before he ceases to be taxable person, unless the business is transferred as a going concern to another person as per entry 4(c)(i) of Schedule II to the TNGST Act, 2017. In view of the fact that the dealer has filed agreement which proves that the dealers have sold the unit as a while as a going concern and as such the sales consideration for an amount of Rs.9,50,00,000/- is not exigible to tax.*"

7. Thus, the impugned demand is unsustainable and is clearly arbitrary and contrary to the aforesaid Notice dated 21.10.2021. Therefore, Court is inclined to set aside the impugned order and remits the case back to the respondent to pass a fresh order on merits and in accordance with law. This exercise shall be carried out by the respondent within a period of 8 weeks from the date of receipt of a copy of this order. Needless to state, the petitioner shall be heard before final orders are passed.

8. This Writ Petition stands allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

02.01.2025

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To:

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C.SARAVANAN, J.

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