

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.07.2023

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THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No. 16102 of 2023

and

W.M.P(MD)Nos. 13491 & 13492 of 2023

Alagu Kannan

... Petitioner

Vs.

The Assistant Commissioner (ST)(FAC),
Tenkasi Circle,

Tenkasi – 627 811.Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorari*, calling for the records leading to the issuance of order bearing reference GSTIN 33ARTPA7004Q1ZH/2017-18, dated 09.03.2023 passed by the respondent and quash the same.

For Petitioner : M/s.J.Adithya Reddy

For Respondent : Mr.B.Saravanan,
Additional Government Pleader

ORDER

By consent of both parties, this writ petition is taken up for final disposal at the stage of admission itself.

2. This writ petition is filed challenging the impugned Assessment order, dated 09.03.2023.

3. The contention of the petitioner is under section 140 of GST enactments the petitioner is entitled to transition of credits available under the erstwhile indirect tax enactments, carried forward in the last returns or inputs held in stock or inputs held in semi-finished goods held in stock by filing Form TRAN-1 within stipulated time. However, while recording the figures, inadvertently specified the CENVAT credit accrued on purchase of inputs under TNVAT Act. The credit should have been recorded in column 7 (a) of TRAN-1 Form, but inadvertently recorded in column 5(c) Act. The respondent had issue notice dated 03.10.2019 stating that there was no ITC available in last returns filed under TNVAT and hence the credit in TRAN-1 is ineligible. After receiving this notice only then the petitioner came to know of the said mistake. Thereafter the respondent confirmed the SCN vide order dated 06.01.2020. Further the respondent has rectified the assessment order and passed a rectified order dated 21.07.2020 to reduce the equal amount of penalty to Rs.10,000/- As soon as the petitioner came to know about the assessment order, had filed a rectification application under section 161 and the respondent without

giving personal hearing for rectification application has passed the impugned order. The respondents have rejected the same on the ground of limitation and error is not self-evident.

4. Heard M/s.J.Adithya Reddy, the Learned Counsel for the petitioner and Mr.B.Saravanan, Additional Government Pleader for the respondents and perused the records.

5. The Learned Counsel appearing for the petitioner submitted that the application is filed well within the time as per the order of the Hon'ble Supreme Court in *Suo Motu* application No.21 of 2022 in Misc.Appl.No.665 of 2021 in *Suo Motu Writ Petition (Civil) No.3 of 2020* and as per this order the period from 15.03.2020 till 28.02.2022 ought to be excluded. It is seen from the records that the assessment order was passed on 06.01.2020 and the rectification application ought to have been filed on or before 06.04.2020. However, the period from 15.03.2020 to 06.04.2020 ought to be excluded based on the *suo motu* extension order. Then the 90 days ought to be calculated from 01.03.2022, wherein the time is available until 30.05.2022, but the petitioner had filed the application on 02.09.2020 itself, which is within the period of limitation.

Therefore, the impugned order stating that the rectification application is filed beyond the period of limitation is incorrect.

6. The Learned counsel for the petitioner relied on the judgment rendered by this Court in W.P.No.1847 of 2022, vide order dated 10.02.2022 has held as under:

24. Insofar as the limitation point is concerned, it has been made explicitly clear in the said orders referred to above. It is brought to the notice of this Court by the learned counsel for the petitioner in respect of the limitation, there could be no much quarrel from respondent side also as these all are the materials on records. Therefore, the limitation insofar as the petitioner is concerned, is saved by the orders of the Hon'ble Supreme Court of India, hence, on that ground mainly if the rectification application is rejected through the impugned order, the same shall not stand in the legal scrutiny. Insofar as the other reasons given of course on merits according to the respondent is concerned, the language used in Section 161 of the Act is that "without prejudice to the provisions of Section 160 of the Act and notwithstanding anything contained in any other provisions of this Act". The words "notwithstanding anything contained in any other provisions of this Act" covers the entire provisions of the Act with the said non-abstante clause thereby all other issues or all other mandates under various provisions of the Act stand excluded when rectification proceedings initiated either suo motu or at the instance of any officer of the respondent/revenue or at the instance of an application filed in this regard by the affected party within

three months period. In view of the saving of the limitation, since the application for rectification has been filed by the petitioner, the same shall be independently considered notwithstanding anything contained in any other provisions of the Act. Therefore, the earlier show cause notices or notices for personal hearing issued to the petitioner, for which, the petitioner has not responded etc., cannot be cited as a reason for rejecting the rectification application as has been done in the impugned order.

25. Therefore, the said reason also in the considered opinion of this Court in view of the language used in Section 161 will not stand.

26. Therefore, all these reasons cited in the impugned order since cannot stand in the legal scrutiny, this Court has no hesitation to hold that the impugned order is liable to be set aside.

27. In the result, the impugned order is set aside. The matter is remitted back to the respondent for reconsideration. While reconsidering the same, the respondent shall borne in mind the independent nature of the decision making process with regard to the alleged rectification of error anything apparently on the face of the record to be rectified on its own merits, wherein after giving an opportunity of being heard to the petitioner, the rectification application shall be accordingly decided and disposed of within a period of six weeks.

7. Following the same, this Court is inclined to allow this writ petition and the impugned order is quashed. Consequently, the

respondent is directed to reconsider the case of the petitioner in the light of the Section 161 of the GST Enactments and in the light of the Judgment of the Hon'ble Supreme Court stated supra by granting opportunity of personal hearing and the said exercise shall be completed within a period of eight weeks from the date of receipt of the copy of the order.

8. Accordingly, this Writ Petition is allowed in above terms.

The impugned order, dated 09.03.2023 is hereby quashed. No Costs.

Consequently, W.M.P(MD)No.13491 of 2023 is allowed and

W.M.P(MD)No.13492 of 2023 is closed.

Index : Yes / No

04.07.2023

Internet : Yes

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To

The Assistant Commissioner (ST)(FAC),
Tenkasi Circle,
Tenkasi – 627 811.

W.P.(MD).No.16102 of 2023

S.SRIMATHY, J

ksa

**Order made in
W.P.(MD)No.16102 of 2023**

04.07.2023