

W.P.(MD)No.1098 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.04.2024

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD)No.1098 of 2021

and

W.M.P.(MD).No.953 of 2021

M/s.Radhikka Ceramic World,
Represented by its Proprietor,
61-C, TPK Main Road, Palanganatham,
Madurai-625 004.

... Petitioner

Vs

The State Tax Officer,
Office of the Assistant Commissioner (ST),
Madurai Rural South Assessment Circle,
Commercial Taxes Buildings,
Madurai.

..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records in GSTIN 033AVDPR7432F1ZN/17-18 Order No.220111190015411 dated 23.12.2019 issued by the respondent and quash the same is wholly without jurisdiction and clear violation of Section 140 (1) of the Tamil Nadu Goods and Services Tax Act, 2017.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.R.Suresh Kumar,
Additional Government Pleader



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ORDER

Heard both sides.

2. In this Writ Petition, the petitioner has challenged the impugned order dated 23.12.2019 bearing reference No.ZA3312190015140 passed by the respondent denying the transitional tax that was remaining unutilized in the VAT returns filed by the petitioner for the month of July, 2017 on 08.08.2017.

3. The case of the petitioner is that the petitioner is engaged in sale of ceramic tiles and like the articles and the petitioner used to import the tiles from various States. It is the case of the petitioner that since there was an apprehension that in the Tile Industry there was large scale evasion of tax and further tax in advance was calculated from the petitioner at the Tuticorin port at 20% of the invoice value in advance. It is submitted that the aforesaid amount remained unutilised in the VAT returns of the petitioner for the month of June 2017 and therefore, the petitioner transited the aforesaid amount of advance tax paid to the Commercial Tax Department at the time of import in the State from the other State in terms of Section 140 of the TNGST Act, 2017.



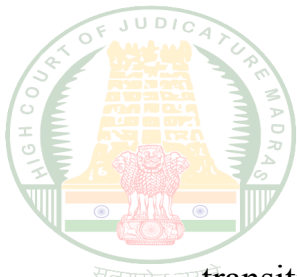
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4. It is further submitted that there is no scope for denying transitioning of such advance tax paid that had remained unutilized in the Return filed by the petitioner for the month of June, 2017. Hence, the impugned order is liable to be quashed.

5. The learned counsel appearing for the petitioner has drawn the attention to the decision of this Court rendered in *Avatar Petro Chemicals Private Limited Vs. Goods and Service Tax Council* reported in (2022) 136 taxmann.com 97(Madras). Further reference was also made to the decision of the Division Bench of the Telangana High Court rendered in *Magma Fincorp Limited Vs. State of Telangana* reported in 2019 (26) G.S.T.L.7 (Telangana).

6. Per contra, learned Additional Government Pleader for the respondent would submit that only the input tax credit lying unutilized as on 30.06.2017 was capable of being transitioned under Section 140 of the TNGST Act, 2017 is clear. It is further submitted that at best, it is open for the petitioner to seek refund of the advance tax paid that had remained unutilized as on 30.06.2017. It is submitted that there is no scope for



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transitioning advance tax lying unutilized. He submits that advance tax was not equivalent to the input tax credit and therefore submits that this Writ Petition is liable to be dismissed.

7. The learned Additional Government Pleader for the respondent would further submit that there is no scope for transitioning of the amount paid as advance tax under Section 141 (1) of the Tamil Nadu Goods and Service Tax Act, 2017. It is therefore submitted that the Writ Petition is devoid of merits if at all the petitioner can be relegated to work out his remedy before the Appellate Authority under Section 107 of the TNGST Act, 2017.

8. I have considered the arguments advanced by the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent. I have also perused the VAT Returns filed by the petitioner in VAT Form-I dated 08.08.2017. The return indicates that there was a balance of Rs.3,71,331/- lying unutilised in the aforesaid returns.



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9. The official copy of the aforesaid return was also produced before this Court by the learned Additional Government Pleader appearing for the respondent which confirms the same.

10. If the amount of advance tax had remained un-utilised under the VAT or under the TNVAT Act, 2006, it has to be allowed to be transitioned under Section 140 of the TNGST Act 2017. The language of Section 140 (1) of the TNGST Act, 2017 makes it clear that **any amount of Value Added Tax and Entry Tax remaining un-utilized in the return shall be allowed to be transitioned and such a registered person is entitled to take credit of such amount in his electronic credit ledger.**

Section 140 (1) of the TNGST Act, 2017 reads as under:-

“140. Transitional arrangements for input tax credit.— (1) A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit [of eligible duties] carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law [within such time and] in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—



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(i) where the said amount of credit is not admissible as input tax credit under this Act; or

(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government. “

11. Therefore, there is no scope for denying such amount which was transited under Section 140 of the TNGST Act, 2017. This Court in *Avatar Petro Chemicals Private Limited Vs. Goods and Service Tax Council* reported in (2022) 136 taxmann.com 97(Madras) has held as under:

“11. Input tax credit and/or capital goods credit which was validly availed under the provisions of the respective enactments which got subsumed into GST enactment cannot be denied. It has to be allowed to be carried forward for being adjusted towards tax liability under the GST regime, if indeed such credit was validly availed lying un-utilized in either the CENVAT account or VAT returns prior to the implementation of GST. As mentioned above, the system is only intended to facilitate the industry. Merely because the architecture of the Web Portal of GST has inherent limitation or does not allow a person to rectify a mistake in the TRAN-1 ipso facto would not mean that such indefeasible rights which were earned accumulated can be denied.



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12. *Further, procedures are nothing but handmaids of Justice and not mistress of law as held by the Hon'ble Supreme Court in Commissioner of Sales Tax v. Auriya Chambers of Commerce, AIR 1956 SC 1556 and State of Gujarat v. Ramprakash P Puri, (1969) 3 SCC 156. Substantial benefit of such un-utilised credit cannot be denied as these credits were earned legitimately under the Tax Enactments which were in force prior to 01.07.2017.*

13. *My views are fortified by a Division Bench of this Court. While dealing with somewhat similar situation, in the case of Commissioner of GST and Central Excise, Assistant Commissioner of GST etc vs. Bharat Electronics Limited vide order dated 18 November 2021 in W.A.No.2203 of 2021 against the order made in W.P.No.2937 of 2019 [Authored by Hon'ble Mr.Justice Mohammed Shaffiq while sitting along with Hon'ble Mrs.Justice Pushpa Sathyanarayana], the Hon'ble Division Bench examined a large number of case laws and held as under:-*

“12. Thus, there seems to be a consistent view that if there is substantial compliance, denial of benefit of Input Tax Credit which is a beneficial scheme and framed with the larger public interest of bringing down the cascading effect of multiple taxes ought not to be frustrated on the ground of technicalities. In view of the above, we are inclined to affirm the order of the learned Single Judge in directing the petitioner/respondent to enable the respondent herein to



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file a revised Form TRAN-1, by opening of the portal and that such exercise is to be completed within a period of 8 weeks from the date of issue this order.”

14. *In these circumstances, I am inclined to allow the writ petition notwithstanding the fact that the petitioner has got an alternate remedy before the Appellate Commissioner against the impugned order, as the officers acting under the provisions of the GST Act are bound by limitation under the Act.*

15. *The respondents are therefore directed to either allow the rectification of TRAN-1 or in the alternative accept manual filling of TRAN-1 or make a suitable credit entry in the Electronic Cash Register of the petitioner after satisfying that the amount sought to be transmitted was indeed lying unutilised in the respective accounts of the petitioner as on 30.06.2017. This exercise shall be completed by the respondents within a period of ninety (90) days from the date of receipt of a copy of this order.*

16. *In fine, the Writ Petition stands allowed. Consequently, connected miscellaneous petition is closed. No costs.”*

12. In ***Magma Fincorp Limited’s case***, it was held as under:-

23. *Once it is admitted that credit was available to the petitioner on the date of switch over from VAT regime to GST regime and once it is admitted that the petitioner may be entitled to make a claim for this credit in other modes, we think that the second respondent ought to have given a*



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purposive interpretation to Section 140 of the Act read with Sections 16 to 21 of the Telangana GST Act 2017. As he has failed to do the same, the matter requires reconsideration.”

13. In view of the above discussion, I find no reasons to sustain the impugned order. Therefore, the impugned order passed by the respondent in GSTIN 033AVDPR7432F1ZN/17-18 Order No. 220111190015411 dated 23.12.2019 stands quashed.

14. Accordingly, the Writ Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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NCC:yes/no
Index:yes/no
Internet:yes/no
TSG
To
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C.SARAVANAN, J.

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