Reserved On	17.07.2023
Pronounced On	16.02.2024

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.20871 & 20874 of 2023
and
W.M.P.Nos.20240, 20241 & 20243 of 2023

M/s.Sri Sasthaa Constructions ... Petitioner in both W.Ps.

Vs.

The Assistant Commissioner (ST),
Ramnagar Assessment Circle,
Coimbatore – 641 009 ... Respondent in both W.Ps.

Prayer in W.P.No.20871 of 2023:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari to call for the records in the impugned assessment order in GSTIN 33ABWPN4200EIZV dated 27.04.2021 for the assessment year 2017-2018 from the files of the respondent herein and quash the same.

Prayer in W.P.No.20874 of 2023:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari to call for the records of the impugned Final Notice in GSTIN 33ABWPN4200E1ZV dated 21.06.2023 from the files of the respondent herein and quash the same.

For Petitioner : M/s.Aparna Nandakumar
(in both W.Ps.)
For Respondent : Mr.C.Harsharaj
Additional Government Pleader
(in both W.Ps.)

COMMON ORDER

Mr.C.Harsharaj, learned Additional Government Pleader takes notice on behalf of the respondent.

2. The petitioner has challenged the impugned Assessment Order dated 27.04.2021 for the Assessment Year 2017-2018 bearing Reference:No.GSTIN33ABWPN4200E1ZV and the consequential demand notice dated 21.06.2023.

3. The impugned Assessment Order dated 27.04.2021 precedes notices dated 26.09.2017, 31.07.2020 and 22.01.2021. The petitioner also has replied to the last mentioned notice on 14.08.2020. The impugned Assessment Order dated 27.04.2021 has also referred to the third notice dated 22.01.2021 in DRC-02 issued under Section 73 of the Tamil Nadu Goods and Services Tax Act, 2017 (hereinafter referred to as TNGST Act, 2017).

4. The specific case of the petitioner is that the petitioner is a Works Contractor, who had rendered Works Contract Service. It is submitted that the employer who had employed to the petitioner as a Works Contractor had deducted Tax Deducted at Source (TDS) amount under Section 13 of the Tamil Nadu Value Added Tax Act, 2006 (In short TNVAT Act, 2006) and this Tax Deducted at Source was transitioned under Section 140 of the TNGST Act, 2017, along with the "purchase tax" paid by the petitioner, which was availed as Input Tax Credit (In short ITC).

5. It is further submitted that tax transmitted was wrongly denied by the respondent vide the impugned Assessment Order dated 27.04.2021.

6. The petitioner has now filed this writ petition after the petitioner received the second mentioned final demand notice/final order dated 21.06.2023, calling upon the petitioner to pay the amount confirmed vide the impugned Assessment Order dated 27.04.2021 towards arrears of tax.

7. The learned counsel for the petitioner submits that the law on the subject is clear. He further submits that the petitioner was entitled to transition the credit of ITC lying unutilized in the VAT Account on 30.06.2017 and the impugned Assessment Order dated 27.04.2021 which has been passed without following the principles of natural justice is therefore liable to be quashed.

8. That apart, the learned counsel for the petitioner further submits that the petitioner has not received the third mentioned notice dated 22.01.2021 in DRC-02 which is said to have been issued under Section 73 of the TNGST Act, 2017.

9. The learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Division Bench of this Court in **M/s.Mahindra and Mahindra Limited** Vs. **The Joint Commissioner (CT) Appeals, Chennai - 6 and others**, [2021] 89 GSTR 269 (Mad.), wherein, the Hon'ble Division Bench of this Court in Paragraph 6 has held as under:-

> ***"6. On a reading of the above extracted paragraphs, it is seen that the Hon'ble Supreme Court, after referring to the decision of the Constitution Bench in the case of Thansingh Nathmal, held that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self imposed restraint and not entertain the writ petition. Further, in paragraph 15, the Hon'ble Supreme Court observed that the High Court may accede to such a challenge and can also non suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. In addition, in paragraph 19, the Hon'ble Supreme Court took note of the fact that when the High Court refuses to exercise the jurisdiction under Article 226 of the Constitution of India, it would be necessary for the Court to record that there was no case of violation of the principles of natural justice or non compliance of statutory requirements in any manner."***

10. A further reference is made to another decision of the Hon'ble Division Bench of this Court in **M/s.J.P.R. Textiles** Vs. **The Deputy Commercial Tax Officer, Palladam**, [2022] 97 GSTR 73 (Mad.) wherein, once again the decision of the Hon'ble Supreme Court in **Glaxo Smith Kline Consumer Health Care Limited** case has been referred to and the Division Bench of this Court has given a similar conclusion as **M/s.Mahindra and Mahindra Limited case** referred to *supra.*

11. The learned counsel for the petitioner has also relied on the following decisions of the Hon'ble Apex Court:-

i. ***The State of Uttar Pradesh*** *Vs.* ***Mohammad Nooh****, [1958] 1 SCR 595;*
ii. ***Oil & Natural Gas Corporation Limited*** *Vs.* ***Gujarat Energy Transmission Corporation Limited and others****, (2017) 5 SCC 42;*
iii. ***Assistant Commissioner of State Tax*** *Vs.* ***Commercial Steel Limited****, (2021) 88 GST 799 (SC);*
iv. ***Godrej Sara Lee Limited*** *Vs.* ***The Excise and Taxation Officer-cum-Assessing Authority and others****, [2023] 109 GSTR 402(SC).*
v. ***State of Tamil Nadu*** *Vs.* ***M/s.Everest Industries Limited,*** *the Division Bench of this Court in W.A.No.1260 of 2017 dated 31.03.2022.*

12. A specific reference is made to Paragraphs 148 to 150 in **State of Tamil Nadu** vs. **M/s.Everest Industries Limited**, which reads as under:-

> ***"148. Insofar as W.A Nos.1446 and 1447/2021 are concerned, the same have been preferred against the orders of the learned Judge dismissing the writ petitions as barred by limitation, based on the decision of the Apex Court in Glaxo Smith Kline Consumer Health Care Pvt lTd.***
>
> ***149. It is brought to the knowledge of this court, a***

subsequent judgment of a Co~ordinate Bench of this court in W.A No.493/2021, wherein after considering the observations of the Hon?ble Apex Court, it was held that "no bar has been imposed by the Apex Court in entertaining a writ petition under Article 226 of the Constitution of India? and the same is quoted below for ready reference:

5. In our respectful view, the decision of the Hon-ble Supreme Court in the said decision has not held that a writ petition under Article 226 of the Constitution of India is an absolute bar. We are of the said view after noting the observations/findings rendered by the Hon-ble Supreme Court in the following paragraphs :

> ***11. In the backdrop of these facts, the central question is: whether the High Court ought to have entertained the writ petition filed by the respondent? As regards the power of the High Court to issue directions, orders or writs in exercise of its jurisdiction under Article 226 of the Constitution of India, the same is no more res integra. Even though the High Court can entertain a writ petition against any order or direction passed/action taken by the State under Article 226 of the Constitution, it ought not to do so as a matter of course when the aggrieved person could have availed of an effective alternative remedy in the manner prescribed by law (see Baburam Prakash Chandra Maheshwari vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar [AIR 1969 SC 556] and also Nivedita Sharma vs. Cellular Operators Association of India & Ors. [2011 (14) SCC 337]. In Thansingh Nathmal & Ors. vs. Superintendent of Taxes, Dhubri & Ors. [AIR 1964 SC 1419], the Constitution Bench of this Court made it amply clear that although the power of the High Court under Article 226 of the Constitution is***

very wide, the Court must exercise self imposed restraint and not entertain the writ petition, if an alternative effective remedy is available to the aggrieved person.....

15. ..... The High Court may accede to such a challenge and can also non suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three Judge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose. .....

19..... Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non compliance of statutory requirements in any manner. Be that as it may, since the statutory period specified for filing of appeal had expired long back in August, 2017 itself and the appeal came to be filed by the respondent only on 24.9.2018, without substantiating the plea about inability to file appeal within the prescribed time, no indulgence could be shown to the respondent at all.

6. On a reading of the above extracted paragraphs, it is seen that the Hon-ble Supreme Court, after referring to the decision of the Constitution Bench in the case of Thansingh Nathmal, held that although the power of the High Court under Article 226 of the Constitution is very wide, the Court must exercise self imposed restraint and not entertain the writ petition. Further, in paragraph 15, the Hon-ble Supreme Court observed that the High Court may accede to such a challenge and can also non suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. In addition, in paragraph 19, the Hon-ble Supreme Court took note of the fact that when the High Court refuses to exercise the jurisdiction under Article 226 of The Constitution of India, it would be necessary for the Court to record that there was no case of violation of the principles of natural justice or non~compliance of statutory requirements in any manner.

7. Therefore, there are certain broad parameters, within which, the Court has to exercise its jurisdiction under Article 226 of The Constitution of India, which read as hereunder :

i. if there is unfairness in the action of the Statutory Authority;

ii. if there is unreasonableness in the action of the Statutory Authority;

iii. if perversity writs large in the action taken by the Authority;

iv. if the Authority lacks jurisdiction to decide the issue and

v. if there has been violation of the principles of natural justice,

the Court will step in and exercise its jurisdiction under Article 226 of The Constitution of India.

8. Further, it would be highly beneficial to refer to the celebrated decision of the Constitution Bench of the Hon-ble Supreme Court in the case of Mafatlal Industries Ltd. Vs. Union of India [reported in 1997 (5) SCC 536] wherein it was held that the jurisdiction of the High Courts under Article 226 and that of the Hon-ble Supreme Court under Article 32 of The Constitution of India could not be circumscribed by the provisions of the Enactment (Central Excise Act) and they would certainly have due regard to the legislative intent evidenced by the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the Act. Further, the Court directed that the writ petition would be considered and disposed of in the light of and in accordance with the provisions of Section 11B of the Central Excise Tax Act and for such a reason, the power under Article 226 of The Constitution of India has to be exercised to effectuate rule of law and not for abrogating it.

9. In the light of the above, we have no hesitation to hold that the observation of the learned Single Judge to the effect that there is absolute bar for entertaining a writ petition does not reflect the correct legal position. Hence, we are inclined to interfere with the observation made in the impugned order.?

150. With utmost respect, the Hon?ble Supreme Court has held that such writs should not be entertained as a matter of course, even though, the

court has wide powers under Article 226 of the Constitution. The writ court ought to have seen that the High Court under Article 226 of Constitution is rather circumscribed by the theory of laches and not by limitation, because the Constitution is above a statute as held by the Apex Court in the Judgment in the matter of Samjuben Gordhanbhai Koli Vs State of Gujarat, reported in MANU/SC/0826/2010. The effect of ?laches? depends upon the facts of each case and is left to the discretion of the court to either reject or entertain a writ petition. In taxing matters, whenever a levy or demand is made without authority of law, the court would be within its power to set aside the same, because any illegality cannot be perpetuated on technicalities. Further, as per the provisions of the TNVAT Act, Section 84 empowers rectification of orders within five years from the date of any order passed by the assessing officer. It is settled law that the error contemplated therein is not just factual, but also legal error. When the power to the statutory authority is granted upto five years to modify the order, it cannot be said that the constitutional authorities would not have power to review the action. Therefore, concurring with the Division Bench, we do not concur with the decision of the Learned Judge to dismiss the writ petitions on the technicality of limitation, that too, when the batch was pending. We set aside the said order of the learned Judge and dispose of the writ appeals in WA.Nos.1446 and 1447/2021 accordingly.

13. It is submitted that although the petitioner failed to file an appeal, the question of denying the aforesaid credit which was validly availed, transitioned and utilized cannot be countenanced.

14. Defending the stand of the respondent, the learned Additional Government Pleader for the respondent submits that the writ petition is barred in favour of the recent decision of the Hon'ble Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others** Vs. **Glaxo Smith Kline Consumer Health Care Limited**, (2020) 19 SCC 631.

15. The Hon'ble Supreme Court in **Glaxo Smith Kline Consumer Health Care Limited case,** referred to *supra*, held as follows:-

> ***"15. ..... It is not a matter of taking away the jurisdiction of the High Court. In a given case, the Assessee may approach the High Court before the statutory period of appeal expires to challenge the assessment order by way of writ petition on the ground that the same is without jurisdiction or passed in excess of jurisdiction-by overstepping or crossing the limits of jurisdiction including in flagrant disregard of law and Rules or procedure or in violation of principles of natural justice, where no procedure is specified. The High Court may accede to such a challenge and can also non-suit the petitioner on the ground that alternative efficacious remedy is available and that be invoked by the writ petitioner. <u>However, if the writ petitioner chooses to approach the High Court after expiry of the maximum limitation period of 60 days prescribed under Section 31 of the 2005 Act, the High Court cannot disregard the statutory period for redressal of the grievance and entertain</u>***

the writ petition of such a party as a matter of course. Doing so would be in the teeth of the principle underlying the dictum of a three-Judge Bench of this Court in Oil and Natural Gas Corporation Limited (supra). In other words, the fact that the High Court has wide powers, does not mean that it would issue a writ which may be inconsistent with the legislative intent regarding the dispensation explicitly prescribed under Section 31 of the 2005 Act. That would render the legislative scheme and intention behind the stated provision otiose."

16. A further reference is also made to Paragraph 17 in **Glaxo Smith Kline Consumer Health Care Limited,** wherein, the decision of the Hon'ble Supreme Court in **M/s.ITC Limited and another** Vs. **Union of India and others**, (1998) 8 SCC 610, has been distinguished.

17. It is further submitted that in Paragraph 18 of the aforesaid case, the Hon'ble Supreme Court has clarified the position that the writ petition cannot be entertained assailing the Assessment Order beyond the statutory period of limitation prescribed for filing an appeal.

18. The learned Additional Government Pleader for the respondent submits that the writ petition challenging the impugned order on the

ground of principles of natural justice or any other grounds viz., lack of jurisdiction etc., is available to the petitioner only if the writ petition was filed within the period of limitation.

19. I have heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

20. The decision of the Hon'ble Supreme Court in **Glaxo Smith Kline Consumer Health Care Limited,** referred to *supra*, which was cited by the learned Additional Government Pleader for the respondent indicates that even under Article 142 of the Constitution of India, the Court cannot extend the period of limitation.

21. The Hon'ble Supreme Court in **M/s.Glaxo Smith Kline Consumer Health Care Limited** referred to *supra*, it has further observed as under:-

> ***"15. ..... To put in a different way, the prescription of limitation in a case of present nature, when the statute commands that this Court may condone the further delay not beyond 60 days, it would come within the ambit and sweep of the provisions and policy of legislation. It is equivalent to Section 3 of the Limitation Act. Therefore, it is uncondonable and it cannot be condoned taking recourse to Article 142 of the***

***Constitution*."**

22. In Paragraph 22 of the aforesaid decision, again the Hon'ble Supreme Court has reiterated the position, which reads as follows:

> ***"22. Suffice it to observe that this decision is on the facts of that case and cannot be cited as a precedent in support of an argument that the High Court is free to entertain the writ petition assailing the assessment order even if filed beyond the statutory period of maximum 60 days in filing appeal. The remedy of appeal is creature of statute. If the appeal is presented by the assessee beyond the extended statutory limitation period of 60 days in terms of Section 31 of the 2005 Act and is, therefore, not entertained, it is comprehensible as to how it would become a case of violation of fundamental right, much less statutory or legal right as such."***

23. There is no dispute that the impugned Assessment Order was passed during the period when the second wave of Covid-19 (Omicron) was at its peak during April 2021. The explanation of the petitioner is that the petitioner had engaged an aged accountant as a tax consultant to take care of the petitioner case and that the said accountant also died due to Covid-19 Pandemic. Thus, the statutory appeal could not be filed under Section 107 of the TNGST Act, 2017.

24. There is reasonable case for accepting the explanation of the petitioner for not having filed an appeal in time under Section 107 of the TNGST Act, 2017. The decision of the Hon'ble Supreme Court in the above case was rendered before the outbreak of Covid-19 Pandemic and therefore, statutory appeal cannot be applied for the orders passed during pandemic.

25. On perusing the records, there is also no doubt that the petitioner was entitled to ITC on Section 12(2) of the TNVAT Act, 2006. To that extent, there is merits in the submission of the petitioner.

26. If ITC was validly availed by the petitioner on “purchase tax” paid by the petitioner under Section 12(1) of the TNVAT Act, 2006 and same was remaining un-utilized, the petitioner was entitled to transition the same under Section 140 of the TNGST Act, 2017 as transitional credit.

27. The petitioner is therefore justified in assailing the impugned Assessment Order although the limitation to file an appeal had expired long back.

28. In so far as transition of Tax Deducted at Source (TDS) under Section 13 of the TNVAT Act, 2006, on Works Contract rendered is concerned, there is no scope for transmitting the credit under Section 140 of the TNGST Act, 2017. Section 140 of the TNGST Act, 2017 is applicable only to ITC.

29. As per Section 13(3) of the TNVAT Act, 2006 read with Rule 9 of TNVAT Rules, 2007, the person employing a Works Contractor has to deduct and deposit the tax within fifteen (15) days and issue a Certificates Work to the contractor in the prescribed form for each deductions separately and send a copy of the Certificate of Deduction in Form S to the Assessing Authority having jurisdiction over the petitioner together with such documents as may be prescribed under the provisions

of TNVAT Rules 2007.

30. As per Sub-Section 4 to Section 13 of the TNVAT Act, 2006, on furnishing a statement, a Tax deduction referred to in Sub-Section (3) to Section 13 of the TNVAT Act, 2006, the amount deposited under Sub-Section (2) to Section 13 is to be adjusted by the Assessing Authority towards the Tax liability under Section 5 or 6 of the Act, as the case may be, which is to constitute a good and sufficient discharge of the tax liability of the person deducting tax to the extent of the amounts deposited. Section 13 of the TNVAT Act, 2006 reads as under:-

"13. Deduction on of tax at source in works contract:-

(1) Notwithstanding anything contained in this Act, every person responsible for paying any sum to any dealer for execution of works contract shall, at the time of payment of such sum, deduct an amount calculated, at the following rate, namely:-

(i) Civil Works Contract:	Two per cent of the total amount payable to such dealer;
(ii) Civil maintenance works contract:	Two per cent of the total amount payable to such dealer;
(iii) All other works contracts:	Five per cent of the total amount payable to such

(i) Civil Works Contract:	Two per cent of the total amount payable to such dealer;
	dealers;

Provided that no deduction under sub-section (1) shall be made where -

(a) no transfer of property in goods (whether as goods or in some other form) is involved in the execution of works contract; or

(b) transfer of property in goods (whether as goods or in some other form) is involved in the execution of works contract in the course of inter-State trade or commerce or in the course of import; or

(c) the dealer produces a certificate in such form as may be prescribed from the assessing authority concerned that he has no liability to pay or has paid the tax under section 5:

Provided further that no such deduction shall be made under this section, where the amount or the aggregate of the amount paid or credited or likely to be paid or credited, during the year, by such person to the dealer for execution of the works contract including civil works contract does not or is not likely to, exceed rupees one lakh.

Explanation.-For the purpose of this Section -

(a) the term ' person' shall include -

i. the Central or a State Government;

ii. a local authority;

iii. a corporation or body established by or under a Central or State Act;

iv. a company incorporated under the Companies Act, 1956 including a Central or State Government undertaking;

v. a society including a co-operative society;
vi. an educational institution; or
vii. a trust;

*b the term "**civil works contract**' shall have the same meaning as in the Explanation to Section 6*

(2) Any person making such deduction shall deposit the sum so deducted to such authority, in such manner and within such time, as may be prescribed.

(3) Any person who makes the deduction and deposit, shall within fifteen days of such deposit, issue to the said dealer a certificate in the prescribed form for each deduction separately, and send a copy of the certificate of deduction to the assessing authority, having jurisdiction over the said dealer together with such documents, as may be prescribed.

(4) On furnishing a certificate of deduction referred to in sub-section (3), the amount deposited undersub-section (2), shall be adjusted by the assessing authority towards tax liability of the dealer under section 5 or section 6 as the case may be, and shall constitute a good and sufficient discharge of the liability of the person making deduction to the extent of the amount deposited:

Provided that the burden of proving that the tax on such works contract has already been deposited and of establishing the exact quantum of tax so deposited shall be on the dealer claiming the deduction.

(5) Any person who contravenes the provisions of sub-section (1) or sub-section (2), shall pay, in addition to the amount required to be deducted and deposited, interest at 1 [two] per cent per month of such amount for the entire period of default.

(6) Where the dealer proves to the satisfaction of the assessing authority that he is not liable to pay tax under section 5, the assessing authority shall refund the amount deposited under sub-section (2), after adjusting the arrears of tax, if any, due from the dealer, in such manner as may be prescribed.

(7) The tax or interest under this section shall become due without any notice of demand on the date of accrual for the payment by the person as provided under sub-sections (1) and (2).

(8) If any person contravenes the provisions of sub-section (1) or sub-section (2), the whole amount of tax payable shall be recovered from such person and all provisions of this Act for the recovery of tax including those relating to levy of penalty and interest shall apply, as if the person is an assessee for the purpose of this Act."

31. Thus, the provisions of the TNVAT Act, 2006 mandates adjustment of the amount so deducted at source and paid by the employer who engages the services of the works contractor. If indeed there was deduction of tax at source by the person who engaged the services of the petitioner, such amount was to be adjusted towards the tax liability of the petitioner. Thus, surplus ITC after adjustment of the tax liability is to be refunded to the petitioner after assessment under Rule 10(A) and 10(B) of TNVAT Rules, 2007.

32. As per Rule10(A) and 10(B) of TNVAT Rules, 2007, the tax liability of an assessee is to be adjusted and excess Input Tax Credit lying utilized has to be refunded back. Sub-rule 10(A) & 10(B) to Rule 10 of TNVAT Rules, 2007 reads as under:-

Rule 10 of the TNVAT Rules, 2007	
Rule 10(A)	***Rule 10(B)***
10(a) In cases where the input tax paid in the month exceeds the output tax payable, the excess input tax credit shall be carried over to the next month.	*10(b) In cases where the input tax credit as determined by the assessing authority for any registered dealer, for a year, exceeds the tax liability for that year, it may adjust the excess input tax credit against any arrears of tax or any other amount due from him.* ***If there are no arrears under the Act or after the adjustment there is still an excess of input tax credit, the assessing authority shall serve a notice in Form P upon such dealer****.*

Form P is issued to refund of ITC.

33. Though there are no prescribed method in the manner in which the amounts have to be adjusted and appropriated, what is evident is that the Tax Deducted at Source (TDS) under Section 13 of the TNVAT Act, 2006 read with Rule 9 of the TNVAT Rules, 2007 has to be adjusted towards the tax liability of the petitioner and thereafter the ITC and balance if any is to be allowed to be paid in cash.

34. Thus, it is evident that tax liability of the petitioner was to be discharged from and out of the Tax Deducted at Source (TDS) by the employer under Section 13 of the TNVAT Act, 2006 read with relevant TNVAT Rules, 2007 who engaged the petitioner as a Works Contractor and thereafter from the ITC and tax paid in cash by the petitioner.

35. Excess of ITC remaining unutilized after such adjustment was to be refunded back to the petitioner if where there were no arrears of tax

under the Act from the petitioner. If this was followed, there would have been surplus of ITC which was to be either refunded back to the petitioner or allowed to be transitioned under Section 140 of the TNGST Act, 2017.

36. Records filed by the petitioner seem to indicate that the sum of Tax Deducted at Source (TDS) was wrongly transitioned under Section 140 of the TNGST Act, 2017 and was later utilized by the petitioner. This amount ought to have been refunded back to the petitioner in accordance with Section 54 of the TNVAT Act, 2006, if it had remained unutilized as there is no provision of transitioning the VAT-TDS remaining unutilized in the hands of the petitioner.

37. The petitioner therefore deserves a chance to defend the case as the impugned Assessment Order has been passed during the period when the country was under semi-lock down mode. If the VAT-TDS had indeed remained unutilized for discharging tax liability under TNVAT Act, 2006, there should be a fresh adjustment of the amount out of VAT-TDS towards tax liability of the petitioner and thereafter ITC which would

have remained unutilized ought to have allowed to be transitioned under Section 140 of the Act or refunded to the petitioner under Section 54 of the TNGST Act, 2017 read with TNVAT Act, 2006.

39. This issue would thereafter require a proper re-consideration. Therefore, these writ petitions are allowed by way of remand. The impugned Assessment Orders are therefore quashed. The cases are remanded back to the respondent with the following directions:-

i. *The Assessing Officer is directed to allow transitional credit of Purchase Tax paid under Section 140 of the TNGST Act, 2017, if petitioner had indeed paid such "purchase tax" under Section 12(1) of the TNVAT Act, 2006 and if the Input Tax Credit availed on such Purchase Tax paid was validly availed under Section 12(2) of the TNVAT Act, 2006 and had remained un-utilized on 30.06.2017,*

i.e., the last day of which TNVAT Act, 2006 was in force which was subsumed into TNGST Act, 2017.

ii. *The Assessing Officer is directed to re-do the assessment by first adjusting of the Tax Deducted at Source under Section 13(1) of the TNVAT Act, 2006 read with TNVAT Rules, 2007 and paid to the credit of Government and thereafter refund the amount of surplus Input Tax Credit which would have remained unutilized after adjustment of such Tax Deducted at Source under Section 13(1) of the TNVAT Act, 2006 read with TNVAT Rules, 2007 and ITC towards the tax liability for the petitioner while filing returns during periods in dispute.*

iii. *Consequently, connected Miscellaneous Petitions are closed. No cost.*

16.02.2024

Neutral Citation : Yes/No
Internet : Yes/No
Index : Yes / No
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To

The Assistant Commissioner (ST),
Ramnagar Assessment Circle,
Coimbatore – 641 009

C.SARAVANAN, J.

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W.P.Nos.20871 & 20874 of 2023
and
W.M.P.Nos.20240, 20241 & 20243 of 2023