IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.1075 of 2022
and
W.M.P.No.1137 of 2022

Tvl.Fresh and Honest Cafe Limited,
Represented by its Manager Taxation and
Authorized Signatory Mr.T.Valliappan ... Petitioner

Vs.

The Assistant Commissioner (ST),
Velachery Assessment Circle,
No.571, Integrated Commercial Taxes
and Registration Department (South Tower),
Room No.222, 2nd Floor,
Anna Salai, Nandanam,
Chennai – 600 035. ... 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 of the impugned order of the re-assessment in TIN 33740801826/2013-2014 dated 04.01.2022 from the files of the respondent herein, quash the same.

For Petitioner : Mrs.Aparna Nandakumar

For Respondent : Ms.Amirtha Poonkodi Dinakaran
Government Advocate

ORDER

The petitioner is before this Court against the Impugned Re-assessment Order dated 04.01.2022 passed by the respondent. It is pursuant to the order passed by the First Appellate Authority vide order dated 13.10.2016 in Appeal No & Year : 310/2015 (VAT).

2. Earlier, the Re-assessment Order came to be passed on 28.05.2015 wherein, the respondent had denied the benefit of G.O.Ms.No.36, Commercial Taxes and Registration (B2) Department dated 01.04.2008 to the petitioner, a registered dealer in Coffee Beans and Seed, Coffee Vending Machines namely Tvl.Fresh and Honest Cafe Limited, Chennai. The respondent also denied the Input Tax Credit on Zero Rated Sales effected by the petitioner under Section 18 of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006.

3. The petitioner filed appeal before the Appellate Commissioner in Appeal No & Year : 310/2015 (VAT). The petitioner has disputed the reversal

of the Input Tax Credit, levy of tax and penalty. By an order dated 13.10.2016, the Appellate Commissioner had remitted the case back to the respondent, which has now culminated in the Re-assessment Order dated 04.01.2022, which is impugned herein.

4. The Impugned Re-assessment Order itself records that the petitioner was entitled to the benefit of G.O.Ms.No.36, Commercial Taxes and Registration (B2) Department dated 01.04.2008. However, it has re-affirmed the issue as far as the denial of Input Tax Credit on Zero Rated Sales effected by the petitioner under Section 18 of the TNVAT Act, 2006.

5. Learned counsel for the petitioner would submit that the law on the issue has now been clarified by the Division Bench of this Court in **M/s.Consolidated Construction Consortium Limited** Vs. **The Assistant Commissioner (CT), Mylapore, Chennai**, (2023) 156 Taxmann.com 587 (Mad.), in W.A.Nos.703 of 2015 etc., batch dated 28.02.2023.

6. Opposing the prayer, the learned Government Advocate for the respondent would submit that the petitioner has an alternate remedy by way of

appeal under Section 51 of the TNVAT Act, 2006 and therefore this Writ Petition is liable to be dismissed. It is submitted that even if the matter has to be remitted back, it can be on terms.

7. That apart, it is submitted that the decision of the Division Bench of this Court in the above mentioned case has been appeal before the Hon'ble Supreme Court and therefore it cannot be said that the issue has attained finality.

8. Having considered the submissions made by the learned counsel for the petitioner and the learned Government Advocate for the respondent, I am of the view that the matter can be remitted back to the respondent by quashing the Impugned Re-assessment Order to pass a fresh order in the light of the decision of the Division Bench of this Court in the above mentioned case to the facts of the present case.

9. The petitioner shall filed a detail reply giving particulars of the Zero Rates Sales on which, the petitioner has availed the Input Tax Credit.

10. Needless to state, the order to be passed will be on merits and without prejudice to the contention of the Department that an appeal has been filed against the view taken by the Division Bench of this Court in the above mentioned case.

11. The respondent is directed to pass fresh orders on merits within a period of eight weeks from the date of receipt of a copy of this order while preserving their rights to recover the disputed tax from the petitioner in case the decision of the Division Bench of this Court is reversed by the Hon'ble Supreme Court.

12. This Writ Petition stands disposed of with the above observations and directions. No costs. Connected Writ Miscellaneous Petition is closed.

12.09.2024

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

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C.SARAVANAN, J.

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To

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