



W.P.(MD)No.11035 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2024

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.11035 of 2023

and

W.M.P.(MD)No.9667 of 2023

Tvl.T.S.R.Trading Company,
Represented by its Proprietor,
T.Sahid Ahamed

... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Deputy Commercial Tax Officer/
The Deputy State Tax Officer – 2,
Dindigul Town Assessment Circle,
Commercial Taxes Office,
Deputy Collector Office Road,
Dindigul – 624 201.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the second respondent in Order No. 33EYHPS0007L1ZE/2021-22 dated 10.03.2023 and quash the same.



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For Petitioner : Mr.B.Rooban

For Respondents : Mr.T.Amjadkhan
Government Advocate

ORDER

This Writ Petition is filed challenging the impugned order dated 10.03.2023 for the period 2021-2022 on the premise that the denial of the Input Tax Credit on the ground that the petitioner has not received any goods from the alleged supplier is in violation of principles of natural justice.

2. It is submitted by the learned counsel for the petitioner that the petitioner is engaged in trading of paper board waste etc and registered under GST Act. The petitioner, for the period in dispute ie., 2021-2022, has filed its returns reporting a total taxable turn over of Rs.1,64,85,795/- in GSTR-3B. The petitioner claimed Input Tax Credit on the alleged supplies received from one JB Traders bearing Registration in GSTIN 33CYBPG1123R1ZJ, the claim of ITC made by the petitioner on such supplies was rejected vide impugned order dated 10.03.2023 on the premise that JB



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Traders was non-existent/fictitious and thus the claim of the Input Tax Credit is

illegal. The petitioner would submit that purchases were effected from JB

Traders during December 2021 of the following materials:

<i>SI No.</i>	<i>HSN Code</i>	<i>Description</i>
1.	48	<i>(waste and scrap) paper or paperboard</i>
2.	4004	<i>Waste, parings and scrap of rubber (other than hard rubber) and powders and granules obtained therefrom</i>
3.	41	<i>Raw hides and skins (other than furskins) and leather</i>
4.	28	<i>Inorganic chemicals, organic or inorganic compounds of precious metals, of rare-earth metals, of radioactive</i>

3. It is further submitted by the learned counsel for the petitioner that the place of business of JB Traders was inspected by the Intelligent Officers under Section 67 of the TNGST Act, 2017 and found that JB Traders was non-existent. Verification of the petitioner's GSTR-2A revealed that the petitioner had claimed to have made the following purchases from JB Traders and availed the Input Tax Credit as detailed below:



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Ineligible Input Tax Credit

GSTIN of Supplier	Invoice No.	Invoice Date	Invoice Value	Rate	Taxable Value	IGST Amount	CGST Amount	SGST Amount
33CYBPG 1123R1ZJ	241	02-12-20 21	338940	5	322800	--	8070	8070
33CYBPG 1123R1ZJ	242	05-12-20 21	365400	5	348000	--	8700	8700
33CYBPG 1123R1ZJ	243	10-12-20 21	220500	5	210000	--	5250	5250
33CYBPG 1123R1ZJ	244	12-12-20 21	220500	5	210000	--	5250	5250
					1090800	0	27270	27270

4. The above claim of Input Tax Credit was sought to be disallowed on the premise that the Input Tax Credit was availed on the strength of fake invoices. In response to the DRC-01 and notice, the petitioner *inter alia* submitted the following:

- a) The supplies in respect of which Input Tax Credit is sought to be rejected, are made from JB Traders, Dindigul bearing GST Registration No. 33CYBPG1123R1ZJ, the petitioner purchased from the registered suppliers. The claim of the Input Tax Credit was supported by original purchase invoices and the supplies were also supported by consideration which was made by the petitioner to the suppliers.
- b) The transaction was also reflected in GSTR 01 by the suppliers and was auto-populated in the petitioner's GSTR-2A and hence the question of reversal



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on the ground of fake invoices or non existing dealer does not arise.

c) If for any reason, the transactions are found to be in contravention of any provision of the GST Act, the authorities ought to proceed against the suppliers and cannot deny the petitioner the Input Tax Credit. That non payment or non filing of return by the supplier cannot be a reason to reject the petitioner's claim of Input Tax Credit or fasten the liability on the petitioner. Reliance was sought to be placed on the following judgments:

(i) *Sri Vinayaga Agencies v. Assistant Commissioner (CT), Vadapalani-1 Assessment Circle, Chennai* reported in (2013) 60 VST 283 (Mad).

(ii) *Althaf Shoes (P) Ltd. Vs. Assistant Commissioner (CT) Valluvarkottam Assessment Circle Chennai* reported in (2012) 50 VST 179 (Mad).

(iii) *Gheru Lal Bal Chand Vs. State of Haryana* reported in (2011) 45 VST 195.

(iv) *Infinite Wholesale Limited Vs Assistant Commissioner (CT), W.P. 9265/2013 dated 06.11.2014* reported in 82 VST 457.

d) Without prejudice to the entitlement to Input Tax Credit with regard to the



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transaction between the petitioner and JB Traders, the petitioner may be furnished with the reasons based on which JB Traders are stated to be non-existent. The petitioner had prayed for cross examination, placing reliance upon the following judgments of the Hon'ble Supreme Court:

(i) State of Kerala Vs K.T.Shaduli Grocery Dealer reported in (1977) 39 STC 478,

(ii) T.M.Rajaganapathi Traders VS. Commercial Tax Officer, Salem reported in (2005) 142 STC 130,

e) Personal hearing was also sought for by the petitioner placing reliance upon ***Asia L.P.G. Pvt. Ltd. vs State Of Karnataka And Others reported in (1997) 107 STC 29.***

f) Reliance was also placed on press release by the Central Board of GST counsel dated 04.05.2018, wherein it has been stated that there would not be automatic reversal of Input Tax Credit on the ground of non payment of tax by the supplier and that default in payment of taxes shall be recovered from the supplier except in those cases where the supplier is found to be missing or closure of business by the supplier or supplier does not have adequate assets. In the present case, the supplier being a registered dealer, it is submitted that it



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does not fall within the exception laid down vide the above press release.

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5. On receipt of the above reply, the respondent authorities observed that as far as registration certificate of JB Traders they are supposed to be doing business activity in 5282a/C1, 10th Street, Ram Nagar, North Extension, Madipakkam, Chennai. The said place of business was inspected by the Department of Commercial Taxes, Government of Karnataka. During the surprise inspection, it was found that the taxable persona viz., JB Traders was not doing any business in the said premises and thus, the petitioner herein could not have received any goods and thus, the petitioner was not eligible to claim Input Tax Credit.

6. Pursuant thereto, a show cause notice dated 05.01.2023 was issued through GSTR portal and registered post which was not responded to by the petitioner. An opportunity of personal hearing was also granted and the petitioner was called upon to appear on 13.02.2023 and 08.03.2022 vide notices dated 08.02.2023 and 03.03.2023 respectively. However, the petitioner could not avail the opportunity of personal hearing nor file any reply and no records were also produced.



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7. In view thereof, the proposals stood concluded and the present Writ Petition is filed against the order of the above assessment. It is trite law that Input Tax Credit is in the nature of concession and conditions attached thereto ought to be strictly complied with. Importantly, Section 16 of the Act *inter alia* provides the following conditions for a recipient / taxable person to be entitled to Input Tax Credit viz.,

- a) the claimant must be in possession of tax invoices or debit note.*
- b) the claimant must have received the goods or services or both.*
- c) the tax charged in respect of the supply with regard to which Input Tax Credit is claimed ought to be paid to the Government by the supplier.*
- d) the supplier must have furnished the return under Section 39 of the Act*

These conditions ought to be strictly complied with.

8. It is stated in the impugned order that the supplier viz., JB Traders being non existent, the transactions cannot be genuine but only fictitious and any claim of Input Tax Credit on the basis of the fictitious transactions cannot be sustained. The question whether a supplier is existing or not, is a question of



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fact and a disputed question of fact which ought to be decided on the basis of evidence adduced by both assessee as well as the revenue. The examination of such disputed question of facts is foreign to jurisdiction under Article 226 of the Constitution. The petitioner having not even availed the opportunity offered by filing, its reply nor attending the personal hearing and making good its submission cannot now question the order of assessment on the ground that the same is a non speaking order. As a matter of fact, the assessment order deals with each paragraph of the objection filed by the petitioner, thus the above contention is again without merit.

9. In view thereof, the challenge to the order of assessment stands rejected. It is open to the petitioner to file an appeal within 2 weeks from the date of receipt of a copy of this order, subject to complying with all conditions relating to appeal, including pre-deposit, if any. If such appeal is filed within the stipulated period i.e., 2 weeks from the date of receipt of copy of this order. The same would be entertained and disposed of in accordance with law after affording the petitioner a reasonable opportunity of hearing.



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Consequently, connected miscellaneous petition is closed.

30.10.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To:

- 1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
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Chennai – 600 005.
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MOHAMMED SHAFFIQ, J.

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