

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2022

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) No.8681 of 2021

and

W.M.P.(MD) Nos.6559 and 6560 of 2021

M/s.Arun Structural,
Rep. by its Authorised Signatory,
K.Antony Raj,
SF-243/244/2, Pakkudi Road, Mathur,
Viraliyamali, Pudukkottai – 622 515.

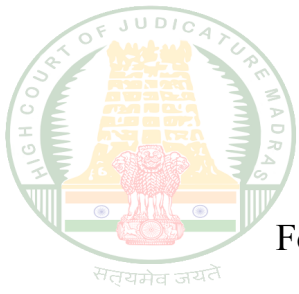
.. Petitioner

Versus

The State Tax Officer,
Pudukkottai – III Assessment Circle,
Commercial Taxes Buildings,
Pudukkottai.

.. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in GSTIN33AAHFA8030B1Z4/17-18, dated 02.02.2021, quash the same as illegal, arbitrary and in violation of the principles of natural justice, without jurisdiction and clear violation of Section 140(1) of the Tamil Nadu Goods and Services Tax Act, 2017 and direct the respondent to pass assessment order afresh after affording an opportunity of personal hearing as contemplated under Section 75(4) of the Tamil Nadu Goods and Services Tax Act, 2017, within a time frame as may be fixed by this Court.



For Petitioner : Mr.N.Sudalaimuthu

For Respondent : Mr.K.S.Selvaganesan
Additional Government Pleader

ORDER

The petitioner has challenged the impugned order dated 02.02.2021, passed by the respondent seeking to deny the input tax credit of Rs.17,60,473/-. It is the case of the petitioner that the petitioner's predecessor was a partnership firm and unfortunately, one of the partners, namely, S.Sridharan met with an accident and died on 07.03.2017. Under these circumstances, the legal heirs of the deceased partner, namely, S.Deepa and S.Naveen were added as partners into the partnership firm and a fresh registration was obtained on 10.04.2017.

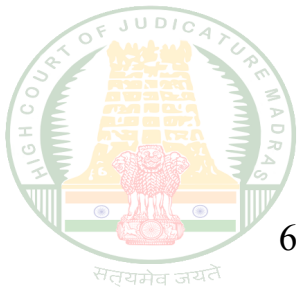
2.It is the further case of the petitioner that the old concern and its stock, input tax credit were taken over by the new partnership concern. It is submitted that while filing monthly return for the month of April 2017 through online, the petitioner reported opening balance of input tax credit of Rs.17,60,473/-. However, the same was not reflected in the online monthly return and therefore, the petitioner had sent a representation dated 08.05.2017, requesting the respondent to permit them to take the closing credit to the new firm.



WEB COPY3. It is submitted that thereafter, the petitioner claimed input tax credit in Annexure – 29 in the monthly returns filed for the months from April 2017 to June 2017. It is submitted that the petitioner has also filed returns under the provisions of the Goods and Services Tax Act, 2017, which came into force on 01.07.2017. The petitioner had attempted to transition the aforesaid credit of Rs.17,60,473/-, which is now sought to be denied.

4. The learned counsel for the petitioner further submits that the petitioner was issued with pre-assessment notice and that the petitioner had also replied to the same. However, the impugned order has been passed without following the principles of natural justice, inasmuch as the petitioner was not heard before the impugned order was passed.

5. Opposing the prayer, the learned Additional Government Pleader for the respondent submits that there is no merit in the Writ Petition, inasmuch as the above said amount was not reflected in the monthly return filed for the month of June 2017 and therefore, it was not open for the petitioner to transition the above said credit in new GST regime.



6.The learned Additional Government Pleader further submits that as per Rule 10(8)(a) of the Tamil Nadu Value Added Tax Rules, 2007, the transferee claiming input tax credit under sub-section (14) of Section 19 shall furnish the following details, namely:-

- (i) Un-availed credit available in the account of the transferor as certified by a Chartered Accountant or Cost Accountant;
- (ii) Inventory of stock transferred with date;
- (iii) Details of capital goods transferred; and
- (iv) Original tax invoices evidencing the payment of tax at the time of purchase.

However, the petitioner had not filed the above records for proving the transfer of input tax credit to the new TIN number.

7.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

8.The question that has to be answered is whether the above said credit which was lying un-utilised in the hands of M/s.Arun Structural, which had TIN No.33604100485 and whether the above said credit could have been transferred in the name of the petitioner also called "M/s.Arun Structural"



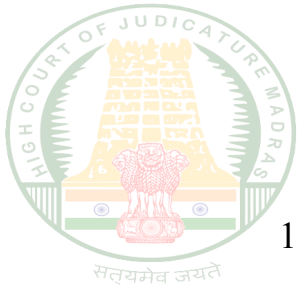
with new TIN No.33886477864 on 10.04.2017. If the above said credit could

WEB COPY

be validly transiting from M/s.Arun Structural, bearing TIN No.33604100485 or M/s.Arun Structural with new TIN No.33886477864 [the petitioner herein], I do not see why the credit should not be allowed to the petitioner.

9.The impugned order has been passed without following the principles of natural justice and therefore, it is liable to be quashed. It is also noticed that the attempt of the respondent is to deny the input tax credit which remained un-utilised from the month of April 2017 after one of the partners died, which led to surrendering the old registration and obtaining fresh registration from the VAT Authorities.

10.Under these circumstances, while quashing the impugned order and remitting the case back to the respondent to pass a speaking order, I direct the respondent to examine the records of the petitioner and the provisions of the Tamil Nadu Value Added Tax Act and the Rules made thereunder and ascertain whether the credit was validly transitioned to the petitioner after it took over the business of the erstwhile firm namely, M/s.Arun Structural. If it was validly transmitted, the same shall be allowed to be transitioned.



11.The above exercise shall be carried out by the respondent within a period of three months from the date of receipt of a copy of this order. The petitioner is directed to furnish all the documents that may available to substantiate the same.

12.This Writ Petition stands disposed of with the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/No

01.04.2022

To

The State Tax Officer,
Pudukkottai – III Assessment Circle,
Commercial Taxes Buildings,
Pudukkottai.



2022 (4) GSTPanacea 63 HC Madras



WP (MD) No.8681 of 2021

C.SARAVANAN, J.

WEB COPY

smn2

Writ Petition (MD) No.8681 of 2021

01.04.2022