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W.P.No.495 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19.01.2024

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THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

**Writ Petition No.495 of 2024**  
**and W.M.P.Nos.510 & 512 of 2024**

TVL.Cleon Optobiz Pvt. Ltd.,  
Represented by its Director Mr.Bhavesh K Shah  
No.93/17 & 93/18, 1<sup>st</sup> floor,  
Govindappa Naicken Street,  
Chennai-600 001.

... Petitioner

-VS-

1.The Assistant Commissioner (ST),  
Kothawalchavadi Assessment Circle,  
Chennai North Division,  
Intergrated Commercial Taxes Building,  
No.32, Elephant Gate Bridge Road,  
Chennai-600 003.

2.The Assistant Commissioner (ST),  
Surapattu Assessment Circle,  
Chennai-600 001.

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorarified Mandamus calling for the

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records of the impugned proceedings of the 1<sup>st</sup> respondent in TN-GST/33AAFCC7280E1ZU/2020-2021 dated 19.09.2023 and quashing the same and directing the 1<sup>st</sup> respondent to allow the petitioner to adjust the credit amount that was blocked.

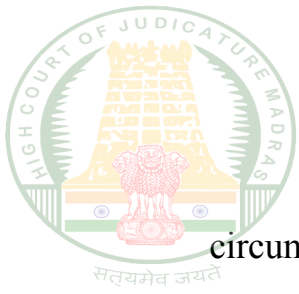
For Petitioner : Ms.Rukmani Venugopalan

For Respondents : Ms.Amirta Poonkodi Dinakaran  
Govt. Advocate

### **ORDER**

This writ petition is directed against the order dated 19.09.2023 in respect of the financial year 2020-2021. The petitioner is a registered person under GST laws and the petitioner states that it regularly files requisite returns. After the receipt of a communication regarding the blocking of credit, the petitioner received both an intimation and the show cause notice from the respondents. Eventually, the order impugned herein came to be issued. By the said order, the Input Tax Credit (ITC) availed by the petitioner in respect of purchases made from M/s.Prince Sales Agency was reversed on the ground that the said entity is non-existent and is not conducting business. The present writ petition arises in the said facts and

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circumstances.

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2. Learned counsel for the petitioner submits that the petitioner cannot be penalised because the GST registration of M/s.Prince Sales Agency was cancelled subsequently with retrospective effect. She further submits that the petitioner submitted the relevant invoices, e-way bills and bank statements with regard to proof of payment against the relevant invoices. In support of the contention that ITC cannot be reversed on account of the subsequent cancellation of the GST registration of the person from whom purchases were made by the assessee, learned counsel relied on the judgment of this Court in *Jinsasan Distributors v. Commercial Tax Officer (CT), Chintadripet Assessment Circle, Chennai (Jinsasan Distributors), (2013) 59 VST 256 [Mad]*. Learned counsel also pointed out that the impugned order records the completely erroneous conclusion that the taxable person has not produced documents, as required under Section 16 of the Tamil Nadu Goods and Services Tax Act, 2017 (the TNGST Act). As regards the finding in the impugned order that products dealt with by the assessee are entirely different from those dealt with by M/s.Prince Sales Agency, learned

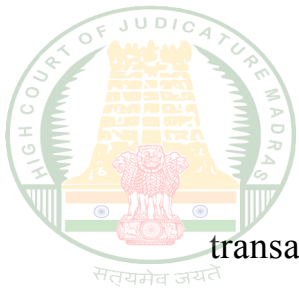


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counsel for the petitioner submits that this issue was not indicated in the intimation or show cause notice that preceded the assessment order.

Therefore, it is submitted that the impugned order is liable to be quashed.

3. In response to these contentions, Ms.Amirta Poonkodi Dinakaran, learned Government Advocate, submits that M/s.Prince Sales Agency applied for GST registration in February 2020 and such registration was granted on 15.03.2020. In the very first year of operation, she submits that a huge turnover of about Rs.50,00,000/- was claimed by the said entity. Out of this, she submits that about Rs.11,00,000/- is attributable to alleged purchases by the petitioner. As regards the reliance of *Jinsasan Distributors*, learned counsel submits that the said judgment stands overruled by the judgment of the Division Bench of this Court in *Sahyadri Industries Limited v. State of Tamil Nadu, T.C.Nos.19 of 2022 batch, judgment dated 18.04.2023 (Sahyadri Industries)*. In particular, reliance is placed on paragraphs 91 and 114 of the said judgment. Learned counsel submits that Section 16(2) of the TNGST Act read with Rule 36 thereof imposes the obligation on the assessee to establish the genuineness of the

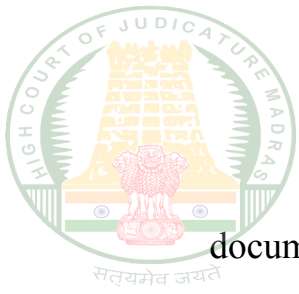


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transaction in relation to which ITC is claimed. Since this involves the production and consideration of relevant documents, she submits that the petitioner should avail of the statutory remedy and not approach this Court under Article 226 of the Constitution of India.

4. In *Sahyadri Industries*, the Division Bench of this Court referred to the judgment of the Hon'ble Supreme Court in the *State of Karnataka v. M/s. Ecom Gill Coffee Trading Private Limited*, dated 13.03.2023 in Civil Appeal No.230 of 2023. In the said judgment, the Hon'ble Supreme Court held that the genuineness of the transaction has to be established by the assessee claiming ITC as per Section 70 of the Karnataka Value Added Tax Act, 2003. Sub-section (2) of Section 16 of the TNVAT Act read with Rule 36 of the rules framed thereunder imposes a similar obligation on assesseees in Tamil Nadu.

5. In the affidavit in support of the writ petition, the petitioner has asserted that invoice copies, e-way bills and proof of payment were produced before the respondents. In fact, the petitioner has referred to its reply dated 12.05.2023 which draws reference to the above mentioned



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documents and states that such documents are being attached thereto. The following finding was recorded by the assessing officer in the impugned order:

*“As per the above said provision, the taxable person has not produced documents u/s 16 of the Act such as Invoice, payment and movement proofs on the claim of ITC”*

In view of the production of invoices, e-way bills and proof of payment of invoices in the form of the relevant bank statements, the above conclusion cannot be sustained. Therefore, the impugned order warrants interference. The impugned order also calls for interference because the petitioner was not put on notice that the goods dealt with by the petitioner are different from those dealt with by its supplier, but a finding was recorded on this issue in the impugned order.

6. For reasons set out above, the impugned order is liable to be quashed for not duly considering the documentary evidence placed on record by the petitioner to establish that the purchases were genuine. Hence, the impugned order is quashed. As a corollary, the matter is remanded for



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reconsideration by the assessing officer. The petitioner is granted leave to submit any additional documents within ten days from the date of receipt of a copy of this order. Upon receipt thereof, the assessing officer is directed to provide a reasonable opportunity to the petitioner and thereafter issue a fresh assessment order within four weeks therefrom.

7. The writ petition is disposed of on the above terms without any order as to costs. Consequently, connected Miscellaneous Petitions are closed.

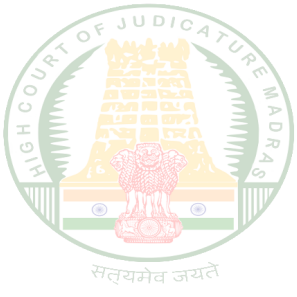
**19.01.2024**

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

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**SENTHILKUMAR RAMAMOORTHY,J**

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