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By Nidhi, Advocate



Judgment No.: 022
Dt.: 29-11-2023



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Judgment Deals With

Section/Rule	Section 139
Authority	Madras High Court
Case Name	Tvl. Lourdes Matha Cashew Industries VS The Assistant Commissioner (ST)
Dated	28 th August, 2023

Brief Facts:

The petitioner is engaged in selling of Cashew nuts from the year 1986. Before GST regime, the petitioner was an assessee under Tamil Nadu Value Added Tax (VAT). Subsequently, under the new regime, the petitioner's registration number is GSTIN.33AAZPV5192P1ZE. After registration with GST, the petitioner is bound by GST scheme which was introduced from 01.07.2017. The petitioner is having a Unit in the State of Kerala. The petitioner has completed the process of migration from the VAT to GST in State of Kerala and has also obtained a valid registration under the CGST/KSGST Act.

However, when the petitioner was attempting to migrate from VAT to GST in Tamil Nadu, the application was not accepted and the process of migration could not be finalized. The petitioner has advertently omitted to take follow up action in the matter. Thereafter he submitted a letter, dated 16.05.2018 pointing out the difficulties. Thereafter, the registration was granted but the validity was granted only from 01.06.2018 though the liability to pay tax has commenced from 01.07.2017. But the petitioner is claiming to grant it from 01.07.2017 so that the petitioner could avail the benefits of Tax credit and submitted an application to this effect. The Department have issued the impugned notice, dated 16.11.2022, wherein it has been stated that the petitioner's application would be considered with condition to forego the Input Tax Credit.

Findings & Order:

It is seen that the petitioner is already as assessee under VAT. The petitioner is seeking to migrate from VAT to GST. Input Tax Credit is available in VAT regime also. In such circumstances the petitioner would have the details and evidence to substantiate his claim of Input Tax Credit and there cannot be difficulty to avail Input Tax credit for the said period. Therefore, the impugned order directing to forego Input Tax Credit is unreasonable and cannot be sustained and the same is liable to be quashed.

Thus, the impugned order, dated 16.11.2022 was quashed. The Input Tax Credit shall be granted based on the details and evidence that would be submitted by the petitioner.

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