IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.4.2015.

CORAM

THE HON'BLE MR.JUSTICE T.RAJA

W.P.Nos.11404 to 11407 of 2015
and
M.P.Nos.1 of 2015 (4 cases)

M/s. Bhairav Trading Company
Represented by its Proprietor
No.4 Singanna Naicken Street
Chennai 600 001. Petitioner in all WPs.

vs.

The Assistant Commissioner(CT)
Broadway Assessment Circle
Chennai. Respondent in all WPs.

Writ Petitions filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari to call for the impugned proceedings of the respondent in TIN/33480061374/2011-2012, TIN/33480061374/2012-2013, TIN/33480061374/2013-2014 and TIN/33480061374/2014-2015 respectively and quash the impugned order dated 13.2.2015 as passed contrary to the principles of natural justice and also contrary to the judgment of the Honourable Supreme Court in the case of the State of Maharashtra Vs Suresh Trading Company reported in 109 STC 439 and the Honourable Madras High Court in the case of M/s.Jinsasan Distributors Vs Commercial Tax Officer (CT) Chintaripet Asst Circle reported in 59 VST 256 in the case of M/s.Althaf Shoes (P) Ltd reported in 50 VST 179 in the case of M/s. Sri Vinayaga Agencies reported in 60 VST 283 in the case of Aassan Global Trade in W.P. Nos.25996 to 25998/2014 and also in the case M/s.Infiniti Wholesale Limited in W.P.No.9265 of 2013.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.S.Kanmani Annamalai, AGP(T)

COMMON ORDER

The writ petitions are directed against the impugned assessment orders dated 13.2.2015 for the assessment years 2011-2012, 2012-2013, 2013-2014 and 2014-2015.

2. Learned counsel appearing for the petitioner, drawing the attention of this court to the judgment of this court in JINSASAN DISTRIBUTORS v. CTO ((2013) 59 VST 256(MAD.)), pointed out that the issue raised in these writ petitions is covered in favour of the petitioner.

3. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who takes notice for the respondent, in reply, fairly conceding to the arguments advanced by the learned counsel for the petitioner, submitted that as against the order passed, writ appeal has been filed and the same is also pending without any order of stay.

4. In the decision reported in (2013) 59 VST 256(MAD.), it has been held as under:-

> "8. The fact that the petitioners herein/assessees under the TNVAT Act have purchased goods from registered dealers on paying the input tax is not in dispute. the fact that they have availed of input-tax credit in terms of section 19(1) of the TNVAT Act, 2006 is also not in dispute and in all these cases the assessment orders have been passed based on documents furnished. The cause of action for issuing the notices for reversal of input tax credit or the order revising the assessment is based on the cancellation of the registration certificates of the selling dealers, who sold the goods to the petitioners herein. It is also not in dispute that the registration certificates of the selling dealers have been cancelled with retrospective effect. That appears to be the one and only ground for initiating the action and therefore the challenge.
>
> 9. The question now to be considered is whether the cancellation of the registration certificates of the selling dealers with retrospective effect will entitle the Department to reverse the input-tax credit already availed of by the petitioners/assessees consequent to assessment orders passed by competent authority based on records....
>
> An almost identical issue was considered by the Supreme Court in State of Maharashtra v. Suresh Trading Company (1998) 109 STC 439 (SC). ...
>
> The Supreme Court, while dismissing the appeals filed by the Revenue, held as follows:(page 441 in 109 STC):
>
> .....
>
> In our view, the High Court was right. A purchasing dealer is entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it. Whatever may be the effect of a retrospective cancellation upon the selling dealer, it can have no

> effect upon any person who has acted upon the strength of registration certification when the registration was current. ...
>
> In the present case, it is not in dispute that the registration certificates of the selling dealers have been cancelled with retrospective effect and, therefore, to reverse the input-tax credit on the plea that registration certificates have been cancelled with retrospective effect cannot be countenanced."

5. In view of the above decision, the respondent cannot deny the benefit of input-tax credit to the petitioner as it is contrary to the law laid down by the Apex Court in the above said judgment. Therefore, the writ petitions stand allowed in the light of the ratio laid down by this court as well as the Honourable Supreme Court in the decision cited above. No costs. The connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssk.

To

The Assistant Commissioner(CT)
Broadway Assessment Circle
Chennai.

+1cc to Mr.P.Rajkumar,Advocate SR.No.21596

+ 1 CC to the Spl.Government Pleader SR NO 21541

W.P.Nos.11404 to 11407 of 2015

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