DATED: 27.04.2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.12441 to 12444 of 2015
and
M.P.Nos.1 to 1 of 2015

M/s.Nadeem Tanning Company
No.205, Valayampet,
Vaniyambadi – 635 751,
Vellore District. ... Petitioner in all W.Ps

vs.

Assistant Commissioner (CT),
Vaniyambadi Assessment Circle,
Vellore District. ... Respondent in all W.Ps

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of certiorari to call for the records of the respondent and to quash the assessment proceedings in TIN No.33374640271/ 2009-10, dated 11.08.2014, TIN No.33374640271/2011-12, dated 11.08.2014, TIN No.33374640271/2012-13, dated 11.08.2014 and TIN No.33374640271/2013-14 dated 12.08.2014 as illegal in view of the various judicial pronouncements of the Madras High Court.

For Petitioner : Mr.C.Baktha Siromoni

(in all W.Ps)

For Respondent (in all W.Ps)	:	Mr.ANR.Jayaprathap, Govt. Advocate (CT)

COMMON ORDER

These writ petitions have been filed challenging the impugned order passed by the Assistant commissioner (CT), Vaniyambadi Assessment Circle, Vellore District, on the sole ground that the impugned order directing the petitioner to pay the entire tax liability although the petitioner had paid the tax to the selling dealer and claimed input-tax credit, ignoring the fact that the issue has been squarely covered by various judgments of this Court viz., ***M/s.Althaf Shoes (P) Ltd., Vs. Assistant Commissioner, (CT) Valluvarkottam*** reported in ***50 VST 179***, ***Sri Vinayaga Agencies Vs. Assistant Commissioner (CT) Vadapalani-I Circle*** reported in ***60VST 283 (Madras)***, ***M/s.New Consolidated Construction Co. Ltd., Chennai Vs. The Assistant Commissioner (CT), Taylors Road, Chennai -10*** in ***W.P.No.6980 of 2015*** and ***Tvl Raymix Concrete India Pvt. Ltd., Vs. Assistant Commissioner (CT), Chennai – 60 040*** in ***W.P.No.7522 of 2015,*** is liable to go.

2. Learned counsel appearing for the petitioner directly draws the

attention of this Court to the decision of this Court in ***M/s.Althaf Shoes (P) Ltd., Vs. Assistant Commissioner, (CT) Valluvarkottam*** reported in ***50 VST 179,*** wherein this Court has held as follows:

> *"It is for the revenue to take necessary action against the vendors, who had not remitted tax collected by them to the State. Without taking recourse to that, I do not think that the Revenue could deny the claim of assessee."*

3. Similarly, learned counsel for the petitioner refers to the decision of this Court in ***Sri Vinayaga Agencies Vs. Assistant Commissioner (CT) Vadapalani-I Circle*** reported in ***60VST 283 (Madras)***, wherein this Court held as follows"

> *"9.Sub-section (16) of Section 19 states that the input tax credit availed is provisional. It, however, does not empower the authority to revoke the input tax credit availed on a plea that the selling dealer has not paid the tax. It only relates to incorrect, incomplete or improper claim of input tax credit by the dealer. It is not so in these cases. In the present case, the petitioner-dealer, admittedly, had paid the tax to the selling dealer and claimed input tax credit and that was accepted at the time when the self-assessment was made. Even the pre-revision notices and the orders under challenge fairly state that the*

petitioner-dealer had paid tax to the dealer. It is therefore, for the department to proceed against the selling dealer for recovery of tax in the manner known to law. The provision under which the present action has been initiated, namely invoking sub-section (16) of Section 19, does not appear to be correct on the admitted facts as above. All the revision orders revising the input tax credit on the admitted case of tax having been paid to the selling dealer, therefore, are found to be totally incorrect, erroneous and contrary to the provisions of the TNVAT Act and Rules. As a result, all the orders are liable to be set aside."

For all the above reasons, the impugned orders are set aside and the writ petitions are allowed. Consequently, M.P.Nos.1 of 2013 are closed. No costs.

4. Adding further, the learned counsel for the petitioner would submit that it is not in dispute that as per Section 19(1) of TNVAT Act, for the purchases effected from the local registered dealer, the purchaser is eligible to claim and avail input tax credit. However, the vendors who sold the goods to the petitioner are registered dealers under TNVAT Act and also issued tax invoices after collecting the taxes at 5% in their invoices. Therefore, the petitioner, being a genuine purchaser, was under bonafide belief that the vendors would have paid the taxes collected from the petitioner to the sales tax department in Annexure-II of their monthly returns filed for the years 2009-

10, 2011-12, 2012-13 and 2013-14. But the Assistant commissioner (CT) has lost sight of the same. Therefore, it is the duty of the respondent to take necessary action against the vendors, who had not paid taxes. Without doing so, the impugned order ought not to have been passed.

5. Per contra, Mr.ANR.Jayaprathap, learned Government Advocate (CT) appearing for the respondent, would submit that the issue raised by the petitioner is covered by the decisions as mentioned by the petitioner in the aforesaid cases. However, as the liability is huge, a direction should be given to the petitioner to pay 25% of the tax liability.

6. This Court finds hardly any justification in the submission of the learned Government Advocate, since a direction to pay 25% of the tax liability would amount to double taxation, which is impermissible in law. The petitioner, being a dealer in leather, as per Section 19(1) of the TNVAT Act, for the purchases effected from the local registered dealer, has become eligible to claim and avail ITC. Besides, the vendors, who sold the goods to the petitioner, are also being a registered dealer under the TNVAT Act, having issued tax invoices after collecting the taxes at 5%, the petitioner was rightly under the bonafide belief that the vendors would have paid the taxes collected from them to the Sales Tax Department in Annexure-II of their monthly returns

filed for the years 2009-10, 2011-12, 2012-13 and 2013-14. It is the duty of the respondent to take necessary action against the vendors, if they have not paid the taxes as per the above said judgments mentioned at paragraph 1. Therefore, following the above judgments, the impugned orders are set aside. All the writ petitions shall stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

27.04.2015

Index : Yes/No
Internet : Yes/No

vsm

To

Assistant Commissioner (CT),
Vaniyambadi Assessment Circle,
Vellore District.

T.RAJA, J.

vsm

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