IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.17567 and 17568 of 2015
and
M.P. Nos. 1 of 2015

M/s.Rinku Steel Industries
Rep. by its Proprietor Mavaram
No.1/13 3rd Reddy Street
Ekkaduthangal Chennai-32. [Petitioner in both the WPs

Vs

The Assistant Commissioner(CT)
Guindy Assessment Circle
No.46 Greenways Road Chennai-28. [Petitioner in both the WPs

PRAYER : These Writ petitions are filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus, alling for the records on the file of the respondent in TIN 33950906422/ 2012-2013 and 2011-12 respectively dated 22.5.2015 and quash the same as illegal contrary to the provisions of the Act and law laid down by this High Court.

For Petitioner : Mr.T.Pramodkumar Chopda
For Respondent : Mr.S.Kanmani Annamalai, AGP(Taxes)

C O M M O N O R D E R

Heard Mr.T.Pramodkumar Chopda, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petitions are taken up for final disposal.

2. There are two writ petitions filed by M/s.Rinku Steel Industries, represented by its Proprietor Mavaram, challenging the impugned proceedings of the Assistant Commissioner (CT), Guindy Assessment Circle, Chennai in TIN 33950906422/ 2012-2013 and 2011-12 respectively dated 22.5.2015 on the ground that the same are illegal, contrary to the provisions of the Act and also the ratio laid down by this Court in Sri Vinayaga Agencies vs. Assistant Commissioner (CT), Vadapalani I Assessment Circle,Chennai and another reported in [2013]

60 VST 283 (Mad)., wherein, this Court has clearly held that the Assessing Officer cannot reverse ITC claimed by the registered dealer on the ground that the registration certificates of the sellers have been cancelled.

3.1 Mr.T.Pramodkumar Chopda, learned counsel for the petitioner would submit that the petitioner being a registered dealer is an assessee on the file of the respondent herein and filed monthly returns together with its Annexures both under the Tamil Nadu Value Added Tax, 2006 (in short " TNVAT Act") and Central Sales Tax (in short CST Act) for the assessment years 2011-12 and 2012-13 disclosing all its purchases and sale made during the said period and based on the monthly returns, assessment orders are deemed to have been passed as per Section 22(2) of the TANVAT Act. Whileso, VAT audit was conducted at the petitioner's premises from 24.02.2014. Based on the said inspection, the respondent issued notices, proposing to reverse the claim of ITC with penalty thereon.

3.2 Learned counsel for the petitioner would further submit that immediately after the issuance of notices dated 18.09.2014, which were served on the petitioner on 19.09.2014, the petitioner had filed its reply/objections, however, the respondent passed orders dated 02.12.2014, which were received on 13.02.2014, without affording an opportunity to the petitioner.

3.3 According to the learned counsel for the petitioner, challenging the said orders dated 02.12.2014, the petitioner has come before this Court by filing W.P.Nos.783 and 784 of 2015 and this Court, by order dated 19.01.2015, set aside the same and remanded the matters to the file of the Assessing Officer for fresh consideration with a further direction to the petitioner to furnish another copy of their objections and on receipt of such copies of objections, the respondent was directed to pass orders on merits.

3.4. Adding further, learned counsel for the petitioner submitted that subsequently the petitioner filed copy of the objections along with annexures on 24.01.2015 for proper consideration of the respondent and the same were also acknowledged on 09.02.2015 by the respondent, indicating that the said objections along with annexures were received on 03.02.2015.

3.5 Learned counsel for the petitioner further submitted that again the petitioner was issued with notice dated 27.02.2015 with respect to the assessment year 2012-2013, for which the petitioner submitted an additional reply on 16.03.2015. Inspite of the objections and the additional reply filed supported by documents, the respondent has passed the impugned orders dated 22.05.2015, taking a ground completely contrary to the ratio laid down in Sri Vinayaga Agencies case reported in [2013] 60 VST 283 (Mad)., mentioned supra, viz., the benefit of ITC claimed by the petitioner is liable to be reversed on the ground that the certificates of registration of his dealers have been cancelled.

3.6. That apart, according to the learned counsel for the petitioner, when all other pleas raised by the petitioner have been almost accepted, only the sole ground that registration certificates of the dealers have been cancelled, the respondent has come forward to pass the wrong impugned orders. Therefore, the same are liable to be quashed.

4. In support of the above submissions, the learned counsel for the petitioner has drawn the attention of this Court to the following Judgments:-

> (i) Sri Vinayaga Agencies vs. Assistant Commissioner (CT), Vadapalani I Assessment Circle,Chennai and another reported in [2013] 60 VST 283 (Mad).,
> (ii) Althaf Shoes (P) Ltd., vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai reported in [2012] 50 VST 179(Mad) and
> (iii) M/s Aassaan Global Trade rep. by its Prop. M.V.A.Seetharamaraju vs. The Assistant Commissioner (CT), T.Nagar (East) Assessment Circle, Chennai (W.P.Nos.25996 to 25998 of 2014 dated 17.10.2014)

to impress upon this Court that there is no power vested on the Assessing Officer to revoke the Input Tax Credit on the ground that the selling dealers have not paid tax or on the ground that registration certificates of the selling dealers have been cancelled.

5. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. The petitioner has filed two objections. The first objection with respect to both assessment years dated 24.09.2014 were followed by detailed objections on 16.03.2015, taking a specific ground that it is not open to the respondent to reverse the claim of ITC on the ground that sellers registration certificates were cancelled. The petitioner has also substantiated its claim that they have effected purchases from registered dealers in the regular course of business, for which the registration addresses are also given, which are as under:-

"M/s Star Traders	TIN:33941103580
M/s Murugan Enterprises	TIN:33471283337
M/s Muyura Marketing	TIN:33071283363
M/s Savitha Enterprises	TIN:33561283336
M/s Jayaram Dheva People	TIN:33820081945

M/s Aroma Sales Impex TIN:33710846220
M/s Asthalaxmi Enterprises TIN:33760782318
M/s Global Impex TIN:33391352639
M/s Sri Ram Enterprises TIN:33510341154
M/s Lotus Traders TIN:33480100659
M/s Sri Balaji Traders TIN:33731088515
M/s R.N.Enterprises TIN:33771088493"

When the purchases of goods from the above dealers were duly entered and reflected in the accounts and monthly returns filed, giving details of purchasers including the registration particulars, commodity code, value, rate of tax, amount of VAT and category of goods in the Annexure I of the said returns, the respondent, in the impugned orders, have not mentioned anywhere that the purchases of goods from the above dealers are doubtful or incorrect. That apart, the foundation upon which the respondent has passed the impugned orders clearly shows the reason that the certificates of registration of the dealers have been cancelled, reversal of ITC has to be effected against the petitioner. The said approach adopted by the Assessing Officer, in my considered view, is contrary to the settled legal position, as laid down by this Court in Sri Vinayaga Agencies vs. Assistant Commissioner (CT), Vadapalani I Assessment Circle,Chennai and another reported in [2013] 60 VST 283 (Mad)., wherein, it is held as follows:-

> " ...Sub-section (16) of Section 19(1) states that input-tax credit availed of is provisional. It, however, does not empower the authority to revoke the input tax credit availed of 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".

7. In the light of the above, the impugned orders are liable to be set aside and accordingly, the same are set aside. The writ petitions are allowed. However, it is open to the respondent to proceed against the dealers, if so advised. No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

The Assistant Commissioner(CT)
Guindy Assessment Circle
No.46 Greenways Road Chennai-28.

+1 cc to Mr.T.PramodKumar Chopda, Advocate sr.30131
+1 cc to Special Government Pleader High Court
Madras sr30301

W.P.Nos.17567 and 17568 of 2015

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