IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.18036 of 2015
and M.P.No.1 of 2015

Tvl.Shanmuga Traders [Petitioner]
rep. by its Proprietor
N.Shanmugam
No.52-A Hospital Road
Kurinjipadi
Cuddalore Taluk

Vs

The Commercial Tax Officer
Cuddalore Taluk Assessment Circle 1
Commercial Taxes Buildings Sub Jail Road
Manjakuppam, Cuddalore 607 001.

[Respondent]

PRAYER : The Writ petitions are filed under Article 226 of the Constitution of India praying for a Writ of certiorari calling for the records in respect of the proceedings TIN No.33984400200/2007-08 dated 6.5.2015 of the respondent under the Tamilnadu Value Added Tax Act 2006 quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.ANR.Jayapratap, GA(T)

O R D E R

Heard Mr.Adithya Reddy, learned Counsel for the petitioner and Mr.ANR.Jayapratap, learned Government Advocate (Taxes), who took notice for the respondent and with their consent, the main writ petition is taken up for disposal.

2. This writ petition is filed by Tvl.Shanmuga Traders represented by its Proprietor N.Shanmugam, challenging the impugned proceedings of the Commercial Tax Officer, Cuddalore Taluk Assessment Circle 1, Cuddalore, in TIN No.33984400200/2007-08 dated 6.5.2015.

3.1 Learned counsel for the petitioner would submit that the respondent cannot reverse the ITC at Rs.13,08,993/- on the ground that the selling dealers have not paid the tax to the department.

3.2 According to the learned Counsel for the petitioner, the petitioner being a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter after referred to as the TNVAT Act) with registration No.TIN33984400200, has been filing the monthly returns for the year 2007-2008, by availing Input Tax Credit under Section 19 of the TNVAT Act for Rs.14,59,749/-, which was equal to the tax paid by them to another registered dealer Tvl. Hindustan Uniliver Limited, Tamil Nadu (TIN 33984400200) at the times of purchases of goods made from that dealer to the tune of Rs.2,20,09,788/- during the relevant year on the strength of tax invoices issued by that selling dealer.

3.3 Adding further, learned counsel for the petitioner would submit that accepting the monthly returns filed by the petitioner, which are filed as document Nos.3 to 14 in the typed set of papers, the respondent also passed the original assessment order in TIN.33984400200/2007-2008 dated 11.02.2009, allowing Input Tax Credit at Rs.14,59,749/- claimed by the petitioner in respect of their purchases during that year from Tvl.Hiindustan Unilever Limited, Tamil Nadu.

3.4 Whileso, according to the learned counsel for the petitioner, after a lapse of more than 5 years from the date of the above original assessment order, the respondent issued notice in TIN No.33984400200/2007-08 dated 27.03.2015, alleging that in respect of the ITC claimed by them for the said year, the selling dealers have not paid tax to the Government to the extent shown in the following table:-

Sl. No	Selling Dealer	ITC claimed by the petitioner (Buying Dealer) (Rs)	Tax paid by the Selling Dealer (Rs)	Difference (Rs)
1	Tvl.Hindustan Unilever Limited	1303069	130412	1152657 (sic)
2	Tvl Sakthi Maligai	156336	0	156336
		1459405	130412	1308993

3.5 Adding further, learned counsel for the petitioner would submit that immediately after receipt of the notice dated 27.03.2015, a detailed reply dated 03.05.2015 was filed stating that they had disclosed all the purchases made from Tvl.Hindustan Unilever Limited, Tamil Nadu and all tax invoices issued by that selling dealer were shown to the respondent. However, knowing pretty well that the ratio laid down by this Court has become final, holding that on the basis of selling dealers having not paid the tax to the department, the ITC claimed by the dealer cannot be reversed under Section 19(1) of the TNVAT Act, the respondent, has passed the impugned order and therefore, the same is liable to be set aside.

3.6 In support of the above contentions, the learned counsel for the petitioner has placed reliance on the Judgment of this Court in the case of "Sri Vinayaga Agencies vs. The Assistant Commissioner (CT) (W.P.No.2038 of 2013 dated 29.01.2013).

4. Mr.ANR.Jayapratab, learned Government Advocate (Taxes) appearing for the respondent while agreeing with the fact that the said proposition laid down by this Court in the Judgment in the case of Sri Vinayaga Agencies, supports the case of the petitioner, submitted that as against the said order, a writ appeal has been filed in W.A.No.2259 of 2013 and the same is also pending for consideration.

5. Be that as it may, since this Court in the aforementioned Judgment viz., Sri Vinayaga Agencies vs. The Assistant Commissioner (CT) (W.P.No.2038 of 2013 dated 29.01.2013), has clearly and categorically held that the ITC claimed by the dealers cannot be reversed under Section 19(1) of TNVAT Act on the ground that the sellers have not paid the tax to the department, the writ petition is allowed and the impugned order is set aside. However, it is open to the respondent to proceed against the sellers, if so advised.

No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rg
To
The Commercial Tax Officer
Cuddalore Taluk Assessment Circle 1
Commercial Taxes Buildings Sub Jail Road
Manjakuppam, Cuddalore 607 001.

+1cc to M/s. S.P. Asokan, Advocate, S.R.No.31066
+1cc to the Special Government Pleader, S.R.No.30986

ALA(CO)
EU(14/07/2015)

W.P.No.18036 of 2015