

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.21004 of 2015

And

M.P.No.1 of 2015

M/s.Hafsa Trade Links,
Rep. by its Proprietrix

...Petitioner

Vs.

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

....Respondent

Prayer:

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the respondent and to quash the assessment proceedings in TIN No.33204644002/2013-14 dated 15.04.2015 as illegal in view of the various judicial pronouncements of the Madras High Court.

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Mr.Manoharan Sundaram

Additional Government Pleader (T)

ORDER

By consent, the writ petition is taken up for final disposal.

2.This writ petition has been filed by M/s.Hafsa Trade Links represented by its Proprietrix challenging the impugned order passed by the Assistant Commissioner (CT), Vaniyambadi Assessment Circle, Vellore District in TIN No.33204644002/2013-14 dated 15.04.2015 as illegal in the light of the ratio laid down by this Court in the case of 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 and categorically leaving no doubt has held that the liability has to be fastened only on the selling dealer but not on the petitioner who has shown proof for payment of the tax on the purchases made, if for any reason the Assessing Officer has come to the conclusion that the selling dealer has not paid the tax.

3. Adding further, the learned counsel appearing for the petitioner would submit that the petitioner being a dealer is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 on the file of the respondent, dealing with leather goods by filing monthly returns promptly every month electronically. Whiles, the respondent issued a notice stating that they have seen the web report and after noticing that the vendors from whom the petitioner has purchased goods have not paid sales tax which was collected from the petitioner, as per the returns filed by them, invited the petitioner to submit an explanation as to why they should not be directed to remit the sales tax to the department.

4. On receipt of the said notice, a detailed reply was given by the petitioner making it clear that no tax can be recovered from a genuine purchaser who has already paid the tax as per the tax invoice issued by the vendor. Once, the seller has issued tax invoice and collected tax, then the tax collected should be remitted to the sales tax department by the sellers. Even if the selling dealer have not reiterated sales and failed to pay the collected tax, the respondent has to make an attempt to collect the tax only from the sellers who failed to pay the tax for the reason that the petitioner is the bonafide purchaser of leather goods in the State and effected purchase only from the registered dealer.

5. Adding further, it is stated that when the petitioner has obtained proper tax invoice from the vendor M/s. Mass International, Vaniyambadi (TIN No. 33744641959) and claimed input tax credit as the petitioner is eligible for tax credit as per Section 3 of the Tamil Nadu Value Added Tax Act, 2006, simply because the vendor who had sold the goods had not paid the tax, the entire ITC claimed by the petitioner cannot be reversed or disallowed. On this basis, the petitioner in their return made it clear that the reversal of ITC for a sum of Rs. 17,06,696/- and penalty levied Rs. 25,06,044/- for the year 2013-14 is illegal. Overlooking the above objection, the learned counsel appearing for the petitioner pleaded that the respondent giving a go-by to the said legal position, has passed the impugned order. Therefore, it is liable to be set aside as it is against the ratio laid down by this Court in the case of Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and another reported in (2013) 60 VST 283 (Mad)., he pleaded.

6. Heard the submissions of the learned counsel appearing for the petitioner and Mr. Manoharan Sundaram, learned Additional Government Pleader (T) who takes notice for the respondent.

7. The only grievance raised by the petitioner in the present writ petition is that, they being a bonafide purchaser of leather goods, has been effecting purchases only from the registered dealers. That apart, they have also obtained proper tax invoice from the vendor, M/s. Mass International, Vaniyambadi (TIN No. 33744641959) and

thereupon claimed input tax credit as they are eligible for the tax credit as per Section 3 of the Tamil Nadu Value Added Tax Act, 2006. The petitioner as per Section 19(1) of the Tamil Nadu Value Added Tax Act, 2006 has effected purchases from the registered dealer, hence they are eligible to claim and avail input tax credit. As a matter of fact, the petitioner's vendor M/s.Mass International, Vaniyambadi (TIN No.33744641959) had sold the goods to the petitioner who had registered themselves under Tamil Nadu Value Added Tax Act, 2006 and issued tax invoice after seeking tax in their invoices, therefore, the petitioner is a genuine purchaser, and as such, simply because one vendor who had sold the goods to the petitioner had not paid the sales tax as per their monthly returns for the year 2013-14, the respondent cannot proceed against the petitioner as they are entitled to proceed against the seller who had effected payment of tax.

8.This issue as rightly argued by the the learned counsel appearing for the petitioner is repeatedly covered by this Court more particularly in the case of Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and another reported in (2013) 60 VST 283 (Mad) followed by one another order passed by this Court in W.P.No.6980 of 2015 dated 12.03.2015. It is pertinent to extract hereunder the relevant portion of the ratio laid down by this Court in the case of Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and another reported in (2013) 60 VST 283 (Mad), which reads as follows:

"The provision of section 19(1) clearly states that input-tax credit can be claimed by the registered dealer, provided if the registered dealer establishes that the tax due on such purchase has been paid by him in the manner prescribed. The pre-revision notices and the orders clearly state in paragraph 3 that the petitioner herein had paid the tax to the selling dealer. If that be the case, the petitioner's case squarely falls under the proviso to section 19(1) of the TNVAT Act. That is availed of only by following rule 10(2). it is also not in dispute that the self-assessment has been made under section 22(2) of the TNVAT Act and therefore the petitioner was justified in claiming the input-tax credit.

It is another matter that the selling dealer has not paid the collected tax and that liability has to be fastened on the selling dealer. It cannot be mulcted on the petitioner-purchasing dealer, which had shown proof of payment of tax on purchases made.

Sub-section (16) of section 19 states that the 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.

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."

9.A mere reading of the above observation and ratio would show that it is squarely applicable to the case of the petitioner, therefore, in my view the impugned order, taking a contra stand against the settled legal position is liable to be set aside. Accordingly, the same is set aside and the writ petition stands allowed. It is needless to mention that it is for the respondent department to proceed against the seller, if so advised.

10.In the result, the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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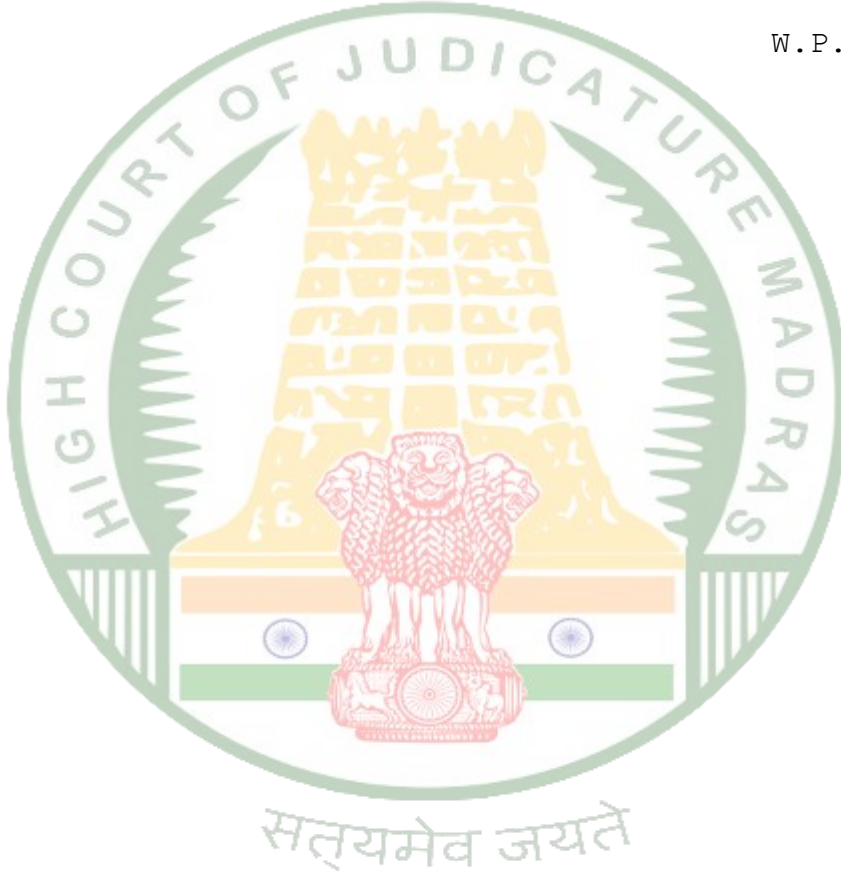
The Assistant Commissioner (CT)
Vaniyambadi Assessment Circle,
Vellore District.

+ 1 cc to Mr.C.Bakthasiromoni, Advocate SR 35582

+ 1 cc to the Special Govt.Pleader(Taxes) SR 35612

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