

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.2929 to 2932 of 2015

and M.P.Nos.1 of 2015

M/s. S.K.L. Enterprises [Petitioner in all the
Rep. by its Prop. S.K.Loganathan petitions]
1 Kanakar Kesavan Street
Arcot Vellore District.

Vs

The Commercial Tax Officer
Arcot Assessment Circle Arcot
Vellore District. [Respondent in all the
petitions]

Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records of the Respondent in his proceedings in TIN No. 33454581736/2008-09, 2009-10, 2010-11 and 2011-12 dated 28.08.14 respectively and consequential proceedings in TIN No. 33454281736/2008-09, 2009-10, 2010-11 and 2011-12 dated 28.08.14 respectively dated 9.1.15 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan
For Respondent : Mr.Cibi Vishnu, AGP(T)

C O M M O N O R D E R

Mr.Cibi Vishnu, learned Additional Government Pleader (Taxes) takes notice for the respondent.

2. The petitioner has come forward with these writ petitions, challenging the orders of the respondent dated 28.08.2014 and also his consequential proceedings dated 09.01.2015.

3. The learned counsel for the petitioner submitted that the petitioner's place of business was inspected by the Enforcement Wing Officers on 18.07.2013 and on verification of purchases made from

other dealer and on verification of Annexure I and the departmental website it was noticed that there was variation with references to purchases made. Therefore, the respondent proposed to reverse the Input Tax Credit (ITC). For the notices issued by the respondent for proposing to reverse ITC, detailed replies were given by the petitioner and the respondent has passed the impugned orders confirming the proposal on 28.08.2014. Thereafter, the petitioner filed petitions under Section 84 of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as 2006 Act) for rectification on 19.09.2014 and by the impugned orders dated 09.01.2015, the said rectification petitions were rejected.

4. The learned counsel for the petitioner further submitted that the reasons given by the petitioner were not accepted on the grounds that (i) the copy of annexure II said to have been filed manually was not authenticated by the seller and it has been attested by the dealer himself (ii) the details filed in an abstract form as Annexure II was not acceptable and (iii) in the absence of clear proof for earlier sufferance of tax, the objection was overruled and the authority proceeded to determine the tax payable.

5. The learned counsel for the petitioner further contended that the petitioner's vendors were all registered dealers on the file of the department and the same was available with the department and the department ought to have taken action against the vendors for not remitting the tax collected by them. Without doing so, the department could not deny the request made by the petitioner.

6. In support of the above contention, the learned counsel for the petitioner relied upon a decision of this Court in the case of Althaf Shoes (P) Ltd., vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai reported in [2012] 50 VST 179 (Mad), wherein it is held as follows:-

"... The mere fact that the Department had not made an assessment on the dealer's vendor, per se, could not stand in the way of the assessing officer considering the claim of the dealer under section 19 of the Act. Going by section 17 which provided that the burden on the purchasing dealer rested to the extent of showing that he was not liable to tax under the Act and read in the context of the fact that the petitioner-dealer had given his sellers' TIN number and had also produced the invoices evidencing the purchase of materials paying tax, the Department could not successfully canvass its claim that the petitioner was not entitled to have the refund. It was

admitted that the petitioner's vendors were all registered dealers on the files of the Department and that the petitioner had also given the TIN number of these vendors. When such particulars were available, it was for the Department to take necessary action against the vendors, who had not remitted tax collected by them to the State. Without taking recourse to that, the Department could not deny the claim of the petitioner".

7. The learned counsel for the petitioner also relied on another decision of 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, it is held as follows:-

"....Section 19(1) states that input-tax credit can be claimed by a registered dealer, if he establishes that the tax due on such purchase has been paid by him in the manner prescribed and that was accepted at the time when the self-assessment was made. The pre-revision notices and the orders clearly stated that the petitioner-dealer had paid the tax to the selling dealer. If that be the case, the petitioner's case squarely fell under the proviso to section 19(1) of the Act. It was another matter that the selling dealer had not paid the collected tax. The liability had to be fastened on the selling dealer and not on the petitioner-dealer which had shown proof of payment of tax on purchases made. The orders were liable to be set aside".

so also the decision rendered by this Court in W.P.Nos.25996 to 25998 of 2014 dated 17.10.2014, wherein this Court, by referring the above two decisions, in paragraph Nos.5 and 6, has held as follows:-

"5.This Court in the case of Althaf Shoes P. Ltd., Vs.Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai -6 reported in (2012) 50 VAR 179 (Mad) held that a perusal of rule 10 of the Tamilnadu Value Added Tax Rules, 2007 read along with Section 19(1) of the Tamilnadu Value Added Tax Act, 2006 made it clear that so long as the purchasing dealer had complied with the requirements as given under rule 10(2), the claim of the purchasing dealer could not be denied by the Department. The circular issued by the Commissioner clearly stated that so long as the vendor was found to be

a registered dealer on the files of the Department, the claim of the dealer for refund could not be rejected nor delayed. The mere fact that the Department had not made an assessment on the dealer's vendor, per se, could not stand in the way of the assessing officer considering the claim of the dealer under Section 19 of the Act. Going by Section 17 which provided that the burden on the purchasing dealer rested to the extent of showing that he was not liable to tax under the Act and read in the context of the fact that the petitioner-dealer had given his sellers TIN number and had also produced the invoices evidencing the purchase of materials paying tax, the Department could not successfully canvass its claim that the petitioner was not entitled to have the refund. It was admitted that the petitioner's vendors were all registered dealers on the files of the Department and that the petitioner had also given the TIN number of these vendors. When such particulars were available, it was for the Department to take necessary action against the vendors, who had not remitted tax collected by them to the State. Without taking recourse to that, the Department could not deny the claim of the petitioner.

6. In the light of the above decision, the observation made by the respondent in the impugned order is wholly unsustainable. Further 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), this Court held that there is no power with the assessing authority to revoke input-tax credit on ground selling dealer has not paid tax and it was held that at the time of filing the self-assessment return under Section 22 (2), the petitioner-dealer had followed rule 10(2) of the Tamil Nadu Value Added Tax Rules, 2007 and therefore, could not be said to have wrongly availed of input tax credit wrongly. Section 19(1) states that input-tax credit can be claimed by a registered dealer, if he establishes that the tax due on such purchase has been paid by him in the manner prescribed and that was accepted at the time when the self-assessment was made. The pre-revision notices

and the orders clearly stated that the petitioner-dealer had paid the tax to the selling dealer. If that be the case, the petitioner's case squarely fell under the proviso to section 19(1) of the Act. It was another matter that the selling dealer had not paid the collected tax. The liability had to be fastened on the selling dealer and not on the petitioner-dealer which had shown proof of payment of tax on purchases made. The orders were liable to be set aside. That 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 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".

8. Heard the learned Additional Government Pleader (Taxes) for the respondent.

9. The learned Additional Government Pleader (Taxes) appearing for the respondent is unable to refute the factual legal submissions. Hence, I have no other option except to set aside the impugned orders and remit the matters back to the authority concerned to consider the case of the petitioner afresh on merits.

10. At this juncture, the learned counsel for the petitioner submitted that the petitioner undertakes to produce Annexure II duly attested by the seller before the authority, if sufficient time is granted.

11. In the result, the impugned orders are set aside and the matters are remitted back to the authority concerned for passing appropriate orders afresh on merits and in accordance with law.

12. It is made clear that the petitioner is directed to appear in person and produce the documents required by the respondent duly attested by the seller on or before 03.03.2015 and on receipt of such documents, the respondent is directed to consider the same and after conducting enquiry and giving the petitioner an opportunity of being heard on 03.03.2015, the respondent shall pass appropriate orders on merits and in accordance with law. On 03.03.2015, if the petitioner fails to avail the opportunity for any reason whatsoever, the authority is empowered to pass orders on merits and in accordance with law, without being influenced by the orders that are set aside by this Court.

The writ petitions are disposed of with the above direction. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

/ True copy /

Sub Assistant Registrar

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To

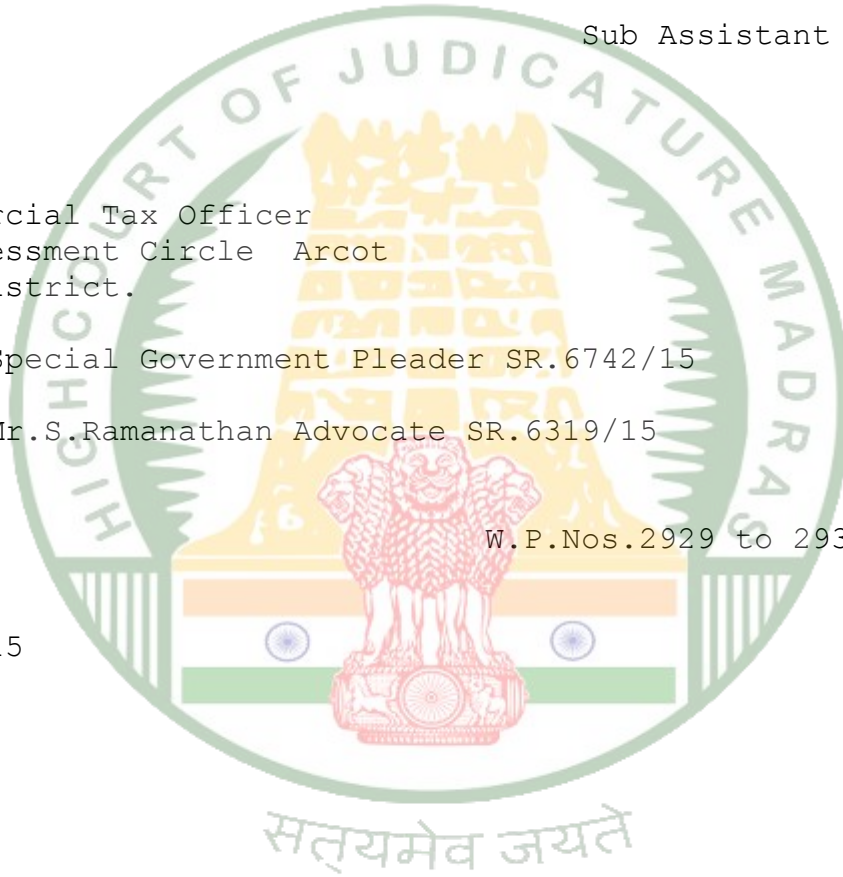
The Commercial Tax Officer
Arcot Assessment Circle Arcot
Vellore District.

+1 cc to Special Government Pleader SR.6742/15

+1 cc to Mr.S.Ramanathan Advocate SR.6319/15

W.P.Nos.2929 to 2932 of 2015

SR(CO)
JK 21/02/15



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