IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2016

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P. Nos.30078 to 30084 of 2015
& M.P.Nos.1 to 1 of 2015

Tvl.Kadri Mills,
Rep.by its Authorised Signatory,
S.Nirmal
Trichy Road, Ondipudur,
Coimbatore - 641 016. ... Petitioner
[in all W.Ps.]

Vs.

The Deputy Commissioner [CT],
Fast Track Assessment Circle-I,
C.T.Building, Balasundaram Road,
Coimbatore - 641 018. ... Respondent
[in all W.Ps.]

COMMON PRAYER : Writ Petitions have been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN.33051780208/2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 respectively dated 18.08.2015 and quash the same as being without jurisdiction and authority of law and contrary to the principles laid down by this Court in the judgment reported in [2012] 50 VST 179 [Mad] [Althaf Shoes [P] Ltd., vs. Assistant Commissioner [CT], Valluvarkottam Assessment Circle, Chennai].

For Petitioner : Mr.R.Senniappan
[in all W.Ps.]

For Respondent : Mr.S.Kanmani Annamalai
[in all W.Ps.] Additional Government Pleader [Tax]

C O M M O N   O R D E R

These Writ Petitions are filed to quash the impugned orders of the respondent dated 18.08.2015 passed in TIN.33051780208/2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 respectively.

2.Heard Mr.R.Senniappan, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader [Tax] appearing for the respondent and perused the materials placed before this Court.

3.According to the petitioner, returns in Form No.1 submitted by the petitioner every month was accepted and passed orders in accordance with Section 22 (2) of the TNVAT Act, 2006 till the assessment year 2014 - 15. However, the said assessment was revised under Section 27 of the Act by passing the impugned order on the ground that the seller on the other end has not reported his sales turnover in Annexure II and not paid the tax due and the petitioner has effected purchases from registration cancelled dealers. Further, the registration certificate of the seller is very well available with existing TIN number of the selling dealers in the department website itself. The invoice issued by the sellers also indicate the correct fact, but the authorities without verifying the website and without conducting enquiry about the genuineness of the dealers registration certificate, passed the impugned order.

4.Further, the case of the petitioner is that the denial of ITC/refund of sales turnover to 100% EOU which is meant for export promotion in respect of the assessment years 2007-08 and 2008-09 are contrary to the decision reported in 2012 (52) VST 286 (Mad) [Emerald Stone Export Vs. Assistant Commissioner (CT), FAC Pudukottai Assessment Circle, Pudukottai]. The petitioner, after receiving the assessment orders from 2007-08 to 2013-14, sought time to gather evidence and produced the same vide letter dated 28.03.2015. However, the respondent, without providing opportunity to the petitioner has passed the impugned order. The petitioner would further state that they have gathered all particulars in support of his claim in respect of all seven assessments in question and ready to produce the same before the respondent.

5.Learned counsel appearing for the petitioner and learned Additional Government Pleader [Tax] appearing for the respondent submitted that the issues involved in these Writ Petitions are squarely covered by the decisions of this Court in Emerald Stone Export vs. Assistant Commissioner [CT], FAC, Pudukkottai I Assessment Circle, Pudukkottai [[2012] 52 VST 286 [Mad]]; Althaf Shoes [P] Ltd., vs. Assistant Commissioner [CT], Valluvarkottam Assessment Circle, Chennai [[2012] 50 VST 179 [Mad]]; Sri Vinayaga Agencies vs. Assistant Commissioner [CT], Vadapalani-I Assessment Circle, Chennai and Another [[2013] 60 VST 283 [Mad]; and Infiniti Wholesale Limited vs. Assistant Commissioner [CT], Koyambedu Assessment Circle, Koyambedu, Chennai [[2015] 82 VST 457 [Mad]].

6.In Emerald Stone Export vs. Assistant Commissioner [CT], FAC, Pudukkottai I Assessment Circle, Pudukkottai [[2012] 52 VST 286 [Mad]], wherein it was held as follows:

> "22.The term 100 per cent EOU is self-explanatory and it has not been properly appreciated by the authority. All that Section 18 of the TNVAT Act, 2006, provides for is that sale should be in the course of export. If the EOU has made the export and proof of export has already been brought on record, Section 18 of the TNVAT Act, 2006, has to automatically apply. The impugned order does not even state as to how a sale to an 100 per cent EOU which is meant for export promotion, does not fall under Section 18(1) of TNVAT Act, 2006. This is a total misconception and misreading of the provisions of the Act."

7.In Infiniti Wholesale Limited vs. Assistant Commissioner [CT], Koyambedu Assessment Circle, Koyambedu, Chennai [[2015] 82 VST 457 [Mad]], this Court relying upon the judgments reported in Althaf Shoes [P] Ltd., vs. Assistant Commissioner [CT], Valluvarkottam Assessment Circle, Chennai [[2012] 50 VST 179 [Mad]] and Sri Vinayaga Agencies vs. Assistant Commissioner [CT], Vadapalani-I Assessment Circle, Chennai and Another [[2013] 60 VST 283 [Mad] has held as follows;

> "22.In the case of Althaf Shoes [P] Ltd., vs. Assistant Commissioner [CT], Valluvarkottam Assessment Circle, Chennai-6 reported in [2012] 50 VST 179 [Mad], the petitioner was a dealer and exporter of finished leather and other products, who claimed refund of ITC under Section 18(2) of the VAT Act in respect of the exports made. Though the refund was granted, subsequently notice was issued seeking to withdraw the relief on the ground that its dealer had not reported the sales turnover and remitted tax and an order was passed, withdrawing the relief granted and levying penalty. While considering the said case, it was held that the circular issued by the Commissioner clearly states that so long as the vendor is found to be a registered dealer on the files of the Revenue, the claim of the assessee for refund could not be rejected nor

delayed. Revenue in the said case did not deny, as a matter of fact, that the assessees vendors are all registered dealers on the files of the Revenue and the assessee had also given the TIN number of these vendors. When such particulars are available, 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, the Revenue could not deny the claim of the assessee. Going by Rule10(2) of TN Vat Rules read along with section 19(1) of the TN Vat Act, it is clear that so long as the purchasing dealer has complied with the requirements as given under Rule 10(2), the claim of the purchasing dealer cannot, by any length of reasoning, be denied by the Revenue. The mere fact that the Revenue had not made an assessment on the assessee's vendor, per se, cannot stand in the way of the assessing officer considering the claim of the assessee under section 19 of the Tamil Nadu Value Added Tax Act. A reading of the circular issued by the Commissioner along with the provisions of the Act makes it clear that there is nothing repugnant in the said circular issued by the Commissioner as a head of the Department as regards the provisions of the Act on input-tax credit claim. Holding so, allowed the writ petition.

23.In the case of Sri Vinayaka Agencies [2013] 60 VST 283 [Mad], the petitioner was dealer in lubricants, purchasing lubricants from a registered dealer. On inspection, it was found that the vendor / dealer had not filed monthly returns nor paid tax to the Department. Though the petitioner had paid tax to the selling dealer, revision notice was issued proposing that the ITC should be reversed on the failure of the selling dealer in paying the tax. Allowing the said writ petition, 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, it was held that the petitioner's case therein squarely fell under the proviso to section 19(1) of the Act. Further, 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 thus set-aside.

24.This Court is of the view that the above referred to decisions squarely cover the case on hand. The only conclusion that could be arrived is the ITC availed by the petitioner could not have been proposed to be reversed or reversed on the grounds stated by the respondent, i.e., the selling dealer has not filed returns or not paid taxes or they were unregistered dealers or their registrations were retrospectively cancelled."

8.Keeping in mind the submissions of the learned counsel on either side and the principles laid down in the decisions referred above, the orders impugned in these writ petitions are sets aside and the matters are remanded back to the respondent to pass orders afresh, after giving opportunity to the petitioner by taking into consideration the judgments cited supra.

9.The Writ Petitions are disposed of accordingly. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

sri/rgr

To

The Deputy Commissioner [CT],
Fast Track Assessment Circle-I,
C.T.Building, Balasundaram Road,
Coimbatore – 641 018.

1 CC to R.Senniappan, Advocate SR.No.11994

W.P. Nos.30078 to 30084 of 2015
& M.P.Nos.1 to 1 of 2015

RSI(CO)
CA(25.02.2016)