IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.3473 to 3479 of 2015
And
M.P.Nos.1 of 2015

Sri Andal Co. [ Petitioner ]
Rep. by its Proprietrix
Tmt.R.Andal
No.59, Fort Main Road
Shevapet Salem-636 002.

Vs

The Assistant Commisisoner(CT)
Shevapet Assessment Circle
Salem-636 007. [ Respondent]

Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the records on the files of the respondent in TIN No.33182640187/ 2007-2008 to 2013-2014 respectively dated 30.12.2014 and quash the same as being contrary to the principles of natural justice without jurisdiction and authority of law and further direct the respondent to pass order afresh in accordance with the principle laid down by this Honourable Court in the judgment reported in (2012) 50 VST 179 (Mds) (Althaf Shoes (P) Ltd. Vs. Assistant Commissioner (CT) Valluvarkottam Assessment Circle Chennai).

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.Kanmani Annamalai, AGP(T)



C O M M O N O R D E R

Heard the learned counsel for the petitioner and the learned Government Advocate (Taxes) for the respondent.

2. These writ petitions have been filed challenging the orders of the respondent dated 30.12.2014 and for a direction to pass orders afresh in accordance with the principle laid down by this Honourable Court in the judgment reported in (2012) 50 VST 179 (Mds) (Althaf Shoes (P) Ltd. Vs. Assistant Commissioner (CT) Valluvarkottam Assessment Circle Chennai).

3. It is the grievance of the petitioner that though 20 days time was sought by the petitioner on 19.12.2014, when the notices were received for the respective assessment years with proposal to reverse the claim of ITC on the ground that the selling dealer has not filed monthly returns and payment of tax to the respective assessing officer, without granting or rejecting the request, the respondent has passed orders on 30.12.2014, which is in violation of principles of natural justice.

4. In support of the above contention, the learned counsel for the petitioner has relied on the 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 this Court has 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".



5. The learned Additional Government Pleader (Taxes) appearing for the respondent is unable to refute the factual legal submissions.

6. In yet 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), this Court has 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".

7. Further, in the decision rendered by this Court in W.P.Nos.25996 to 25998 of 2014 dated 17.10.2014, this Court, by referring the two decisions cited supra, 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 Asssessment 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 nor paid the tax. It only relates to incorrect, incomplete or improper claim of input-tax credit by the dealer".

8. 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.

9. 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 after affording an opportunity of being heard to the petitioner.

10. It is made clear that the petitioner is directed to appear in person and produce the documents on 30.03.2015 and on such appearance and production of documents, the respondent is directed to consider the same and after conducting enquiry and giving the petitioner an opportunity of being heard on 30.03.2015, the respondent shall pass appropriate orders on merits and in accordance with law within a period of four weeks thereafter. On 30.03.2015, 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/-
Asst.Registrar (AD I)

/true copy/

Sub Asst. Registrar

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To

The Assistant Commisisoner(CT)
Shevapet Assessment Circle Salem-636 007.

1 cc to Mr.R. Senniappan, Advocate, Sr. 7443
1 cc to Spl. Government pleader (Taxes0, Sr. 7584

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