IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.3480 of 2015
And
M.P.No.1 of 2015

Tvl.Ishack Steel Traders
Rep by its Proprietor
P.M.Ishack
No.28, Venkata Maistry Street
Chennai 600 001 [Petitioner]

Vs

The Commercial Tax Officer
Esplanade Assessment Circle
116 Angappa Naicken Street
Chennai 600 001 [Respondent]

Petitions 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 33140080185/2011-12 dated 18.12.2014 and quash the same as being contrary to the principle laid down by the Honble Court in the Judgement reported in (2013) 59 VST 256 (Mad) (Jinsasan Distributors Vs.Commercial Tax Officer(CT) Chintadripet Assessment Circle Chennai).

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.Kanmani Annamalai, AGP(T)
Additional Government Pleader (Tax)

O R D E R

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

2. This writ petition has been filed challenging the order of the respondent 18.12.2014 as being contrary to the principle laid down by this Court in the Judgement reported in (2013) 59 VST 256 (Mad) (Jinsasan Distributors Vs.Commercial Tax Officer(CT) Chintadripet Assessment Circle Chennai).

3. When the matter is taken up for hearing, it is submitted by the learned counsel on either side that the issue involved in this writ petition is covered by the decision of this Court dated 06.11.2014 made in W.P.No.9265 of 2014.

4. In the said order dated 06.11.2014 made in W.P.No.9265 of 2014, the learned Judge has elaborately dealt with the issue and arrived at the conclusion by setting aside the impugned order therein. The operative portion of the said order reads as follows:-

> "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 or reversed on the grounds stated by the respondent, ie., the selling dealer has not filed returns or not paid taxes or they were unregistered dealers or their registrations were retrospectively cancelled.
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> 25. As notice above, the exercise of the jurisdiction by the respondent itself is ex-facie arbitrary and the proceedings are not only vitiated by serious procedural infirmities, but are arbitrary and unreasonable and without jurisdiction and held to be illegal. Therefore, the writ petition is allowed and the impugned order, dated 26.02.2013, is hereby set aside. No costs. Consequently the connected MPs are closed".

5. Following the said order, the impugned order is set aside and the writ petition is allowed. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer
Esplanade Assessment Circle
116 Angappa Naicken Street
Chennai 600 001

1 CC to Mr.R.Senniappan, Advocate SR.No. 7444

1 CC to the Government Pleader, SR.No. 7581

W.P.3480 of 2015
and M.P.No.1 of 2015

CNR (CO)
PSI (23.02.2015)