IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 24.04.2015

CORAM:

THE HON'BLE MR. JUSTICE T. RAJA

W.P. Nos. 5562 and 5563 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.Bajaj Brothers
Rep. By its Proprietor
Amit Bajaj,
No.104, Main Bazaar,
Vellore. ... Petitioner

Vs.

The Commercial Tax Officer,
Vellore (Rural), Vellore. ... Respondent

PRAYER: Writ Petitions filed under section 226 of the Constitution of India to issue an order of Writ of Certiorari, to call for the records on the file of the respondent in his impugned proceedings made in TIN : 33764322042/2011-2012 and 33764322042/2012-2013, dated 12.1.2015 and quash the same.

For petitioner : Mr.S.Rajasekar

For respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader (T)

COMMON ORDER

The present writ petitions have been directed against the impugned orders passed by the respondent in TIN : 33764322042/2011-2012 and 33764322042/2012-2013, dated 12.1.2015 as they are contrary to the scheme of the Act and also on the ground that the issue raised in the petition is covered by the decision of this Court in Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani - I Assessment Circle, Chennai and another ((2013) 60 VST 283 (Madras)).

2. The learned counsel appearing for the petitioner submitted that the petitioner being a dealer registered on the file

of the Commercial Tax Officer, Vellore (Rural), Vellore in TIN : 33764322042/2011-2012 and 33764322042/2012-2013, has also filed Form I Returns for the years 2011-12 and 2012-2013 reporting total and taxable turnover. Whileso, the respondent issued a notice dated 22.7.2013 stating that on verification of the returns filed by the petitioner for the assessment years through departmental website, it is noticed that mismatching transaction had taken place and that such transaction is proposed to be brought under the taxable net element. When the petitioner has filed their monthly returns/furnishing particulars etc., in consonance with Section 19 (10)(a) of Tamil Nadu Value Added Tax and Rule 10(2) of Tamil Nadu Value Added Rules, 2007 claiming Input Tax Credit as per Section 19 (11) of the said Act, the respondent ought not to have directed the petitioner to furnish the proof for payment of tax by the petitioner's seller for the purpose of allowing input tax credit. In support of his submissions, the learned counsel also relied upon the judgment of this Court in Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani - I Assessment Circle, Chennai and another ((2013) 60 VST 283 (Madras)).

3. Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent, in reply to the aforesaid submission, submitted that the issue is squarely covered by the decision of this Court reported in Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani - I Assessment Circle, Chennai and another ((2013) 60 VST 283 (Madras)).

4. It is necessary to extract the relevant portion of the said decision, which reads as under:

> "....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."

5. In view of the above, the impugned orders passed by the respondent are set aside and the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssk.

To

The Commercial Tax Officer,
Vellore (Rural),
Vellore.

+2cc's to Mr.R.Hemalatha, Advocate, S.R.No.22772
+1cc to the Special Government Pleader(Taxes), S.R.No.22875

W.P. Nos.5562 and 5563 of 2015

TEJ(CO)
CA(26/05/2015)