IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7522 of 2015 and M.P.No.1 of 2015

Tvl Raymix Concrete India Pvt. Ltd.,
rep. by its Chief Accountant S.M.Sekar ...Petitioner

Vs.

Assistant Commissioner (CT),
The Commercial Tax Officer,
J.J. Nagar Assessment Circle,
Shop No.38, 39 and 64 Anna Nagar,
Slum Clearance Board Shopping Complex,
Thirumangalam, NVN Nagar,
Chennai-600 040. ...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in respect of the proceedings TIN No.331349471/2011-12 dated 08.01.2015 of the respondent under the Tamil Nadu Value Added Tax Act, 2006 and to quash the same.

For Petitioner : Mr.Adithya Reddy

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

O R D E R

With the consent on either side the Writ Petition itself is taken up for final disposal at the admission stage.

2.The petitioner has come forward with the aforesaid prayer.

3.Learned counsel for the petitioner submitted that the authority has passed an order holding that the petitioner is liable for non payment of the selling dealer. He would further submit that this Court has considered the similar contention and allowed the W.P. No.2038 of 2013 on 29.01.2013, which reads as follows:

"...

8.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.

9.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 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. It is not so in these cases. In the present case, the petitioner-dealer, admittedly, had paid the tax to the selling dealer and claimed input tax credit and that was accepted at the time when the self-assessment was made. Even the pre-revision notices and the orders under challenge fairly state that the petitioner-dealer had paid tax to the dealer. It is therefore, for the department to proceed against the selling dealer for recovery of tax in the manner known to law. The provision under which the present action has been initiated, namely invoking sub-section (16) of Section 19, does not appear to be correct on the admitted facts as above. All the revision orders revising the input tax credit on the admitted case of tax having been paid to the selling dealer, therefore, are found to be totally incorrect, erroneous and contrary to the provisions of the TNVAT Act and Rules. As a result, all the orders are liable to be set aside."

4.Learned Additional Government Pleader appearing for the respondent would submit that the petitioner has got alternative remedy to agitate the issue. He would further contend that the petitioner was given due opportunity and his objections were considered and the authority has passed a detailed order, which is extracted below:

"In the absence of documents proving that the selling dealers are not annual return filers and they are filing monthly return in Form I and paid tax dues to the Government along with the acknowledgment obtained either online or assessment Circle, the objections are over-ruled and confirmed the proposal."

5.Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondent and perused the documents available on record.

6.Having considered the submission made by both sides, more particularly paragraphs 8 and 9 of the decision, which is extracted supra, I am of the view that the writ petition has to be allowed and the the alternative remedy is not a bar for entertaining the writ petition.

7.Accordingly, the impugned order is set aside and the Writ Petition is allowed. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
The Commercial Tax Officer,
J.J. Nagar Assessment Circle,
Shop No.38, 39 and 64 Anna Nagar,
Slum Clearance Board Shopping Complex,
Thirumangalam, NVN Nagar,
Chennai-600 040.

1 cc to Spl.Government Pleader,Sr.No15703
1 cc to Mr.S.P.Asokan ,Advocate, SR.No.15183

W.P.No.7522 of 2015

mp(co)
pmk.6.4.2015