IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.7588 to 7590 of 2015

and M.P. Nos.1 to 1 of 2015

K.A.S.Enterprises,
rep. by its Proprietor
Kaleelur Rahman Ahamed ...Petitioner in all cases

Vs.

The Assistant Commissioner (CT),
Chrompet Assessment Circle,
117, Station Road, Chrompet,
Chennai-600 044. ...Respondent in all cases

Prayer in all cases:- Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in TIN No.33220941016/2011-12, 2012-13 and 2013-14 dated 09.02.2015 and 06.02.2015 and to quash the same.

For Petitioner in all cases : Mr.R.Kumar

For Respondent in all cases : Mr.Kanmani Annamalai AGP(T)

COMMON ORDER

The petitioner has come forward with the writ petitions challenging the impugned proceedings issued by the respondent and to quash the same.

2.The short point raised by the petitioner in the writ petitions is that the impugned proceedings were passed cancelling the petitioner's registration certificate with retrospective effect. This fact has been admitted by the respondent.

3.Learned counsel for the petitioner relied on the judgment of this Court reported in 2013 59 VST 256 (Mad), Jinasan Distributors vs. Commercial Tax Officer (CT), Chintadripet Assessment Circle, Chennai wherein paragraphs 8, 9 and 12 which have been held as follows:

> "....
> 8.The fact that the petitioners herein/assesses under the TNVAT Act have purchased goods from registered dealers on paying the input tax is not in dispute. The fact that they have availed input tax credit in terms of Section 19(1) of the TNVAT Act, 2006 is also not in dispute and in all these cases the assessment orders have been passed based

on documents furnished. The cause of action for issuing the notices for reversal of input tax credit or the order revising the assessment is based on the cancellation of the registration certificates of the selling dealers, who sold the goods to the petitioners herein. It is also not in dispute that the registration certificates of the selling dealers have been cancelled with retrospective effect. That appears to be the one and only ground for initiating the action and therefore the challenge.

9.The question now to be considered is whether the cancellation of the registration certificates of the selling dealers with retrospective effect will entitle the department to reverse the input tax credit already availed by the petitioners/assessees consequent to assessment orders passed by competent authority based on records.

....

12. Insofar as the cancellation of the registration certificates of the selling dealers is concerned, it is for those selling dealers to canvas the plea as to when it will take effect either on the date of the order or with retrospective effect. Insofar as the petitioners are concerned, they have purchased the taxable goods from registered dealers who had valid registration certificates; paid the tax payable thereon; availed of input-tax credit; and the assessing officers have passed orders granting such benefit. Therefore, the assessment orders granting input-tax credit were validly passed. There was no cancellation of the registration certificates of the selling dealers at that point of time. The petitioners/assessees have paid input tax based on the invoices issued by registered selling dealers and availed of input-tax credit. The retrospective cancellation of the registration certificates issued to the sellling dealers cannot affect the right of the petitioners/assessees, who have paid the tax on the basis of the invoices and thereafter claimed the benefit under Section 19 of the TNVAT Act, 2006. they have utilized the goods either for own use or for further sale. At the time when the sale was made, the selling dealers had valid registration certificates and the subsequent cancellation cannot nullify the benefit that the petitioners/assessees availed of based on valid documents.

......

In the present case, it is not in dispute that the registration certificates of the selling dealers have been cancelled with retrospective effect and, therefore, to reverse the input-tax credit on the plea that registration certificates have been cancelled with retrospective effect cannot be countenanced. Whatever benefits that has accrued to the petitioners based on valid documents in the course of sale and purchase of goods, for which tax has been paid cannot be declined. The transaction that took place when the registration certificates of the selling dealer were in force cannot be denied to the petitioners/assessees on the above plea. This is contrary to the law laid down by the Supreme Court in the above stated case."

4.The above said judgment is squarely applicable to the facts of the present case. In view of the same, the impugned proceedings passed by the respondent are set aside. The writ petitions are disposed of with a direction to the respondent to activate the registration certificate within a week from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

5.Since the impugned orders have been set aside, no coercive action shall be taken against the petitioner.

18.03.2015

BEING MENTIONED

This Writ Petitions having been posted for 'Being Mentioned' on Tuesday, the Thirty First day of March 2015 in pursuance of the order of this Court dt.18.3.2015 and made herein in the presence of Mr.R.kumar, Advocate for the petitioner and Mr.Kanmani Annamalai, Additional Government Pleader (T) for Respondents, this Court made the following order:

The matters have been listed today under the caption "for being mentioned to" at the instance of the learned counsel for the petitioner.

2. It is pointed out that in paragraph No.4 of the order dated 18.03.2015, the lines directing the respondent to activate the registration certificate within a stipulated period are not pertaining to the cases on hand and hence the same has got to be deleted.

3. Paragraph No.4 of the order dated 18.03.2015 reads as follows:-

"4. The above said judgment is squarely applicable to the facts of the present case. In view of the same, the impugned proceedings passed by the respondent are set aside. The writ petitions are disposed of with a direction to the respondent to activate the registration certificate within a week from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed".

4. On a perusal of the above order dated 18.03.2015, it is seen that, after setting aside the impugned order, a direction was issued to the respondent to activate the registration certificate within a week from the date of receipt of a copy of the order, which are not relevant to the facts of the case of the petitioner.

5. Since a typographical error has crept in, in paragraph No.4 of the order dated 18.03.2015, the same is deleted and the following are substituted in paragraph No.4:-

"4. The above said judgment is squarely applicable to the facts of the present case. In view of the same, the impugned proceedings passed by the respondent are set aside. The writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed".

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Chrompet Assessment Circle,
117, Station Road, Chrompet,
Chennai-600 044.

+1 cc to The Spl.Government Pleader(T)SR.15697

+1 cc to Mr.R.Kumar, Advocate,SR.15211.

ts(co)
krd 13/4

W.P.Nos.7588 to 7590 of 2015