IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.03.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.7657 of 2015 and M.P.Nos.1 & 2 of 2015

M/s.All India Metal and Alloys
rep. by its Proprietor ... Petitioner

Vs.

1.The Assistant Commissioner (CT),
Broadway Assessment Circle,
Chennai.

2.The Deputy Commissioner (CT),
Computer Cell, PAPJM Building,
Greams Road, Chennai-600 006. ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus to call for the impugned proceedings of the first respondent in Rc.No.33880061057 dated 13.02.2015 and to quash the same as passed contrary to the provisions of the Tamil Nadu Value Added Tax Act and also against the principles of natural justice and to further direct the first respondent to activate the petitioner's TIN No.33880061057 so as to enable the petitioner to file their monthly returns as per law.

For Petitioner : Mr.P.Rajkumar

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

ORDER

The petitioner has come forward with this writ petition challenging the proceedings dated 13.02.2015 issued by the first respondent and to quash the same.

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

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:

> "....
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> 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.
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> 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.
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> ....
>
> 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 first respondent in Rc.No.33880061057 dated 13.02.2015 is set aside. The writ petition is disposed of with a direction to the first 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 order has been set aside, no coercive action shall be taken against the petitioner.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

VGA

To

1.The Assistant Commissioner (CT),
Broadway Assessment Circle,
Chennai.

2.The Deputy Commissioner (CT),
Computer Cell, PAPJM Building,
Greams Road, Chennai-600 006.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.15374
+1cc to the Special Government Pleader(Taxes), S.R.No.15695

W.P.No.7657 of 2015

GR(CO)
CA(31/03/2015)