

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.9000, 9001 & 9002 of 2015
and
M.P.Nos.1, 1 & 1 of 2015

Tvl.Vishwa Infrastructures and
Services (P) Ltd., represented by its
Deputy General Manager (Projects),
Mr.L.Ravi,
New No.28, Old No.35,
1st Main Road,
West Shenoy Nagar,
Chennai - 600 030.

... Petitioner in all W.Ps

vs.

The Commercial Tax Officer,
Aminjikarai Assessment Circle,
Dowlath Towers, 7th Floor,
Taylors Road, Kilpauk,
Chennai - 600 010.

... Respondent in all W.Ps

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in respect of the impugned Assessment Orders TIN:33061024233/2009-10, TIN:33061024233/ 2010-11 and TIN:33061024233/2011-12 dated 06.02.2015 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.A.N.R.Jayapratap
Additional Government Pleader (T)

COMMON ORDER

With the consent of either side, these Writ Petitions are taken up for final disposal at the admission stage.

2. Petitioner has come forward with these writ petitions seeking to quash the impugned Assessment Orders dated 06.02.2015 of the respondent under the Tamil Nadu Value Added Tax Act, 2006.

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

4. 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."

5. 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 their objections were considered.

6. Considering the submissions made by both sides, more particularly, paragraphs 8 and 9 of the decision in W.P. No.2038 of 2013 which are extracted supra, this Court is of the view that the

writ petitions have to be allowed and that the alternative remedy is not a bar for entertaining these writ petitions.

Accordingly, these Writ Petitions are allowed. The impugned orders are set aside. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gm

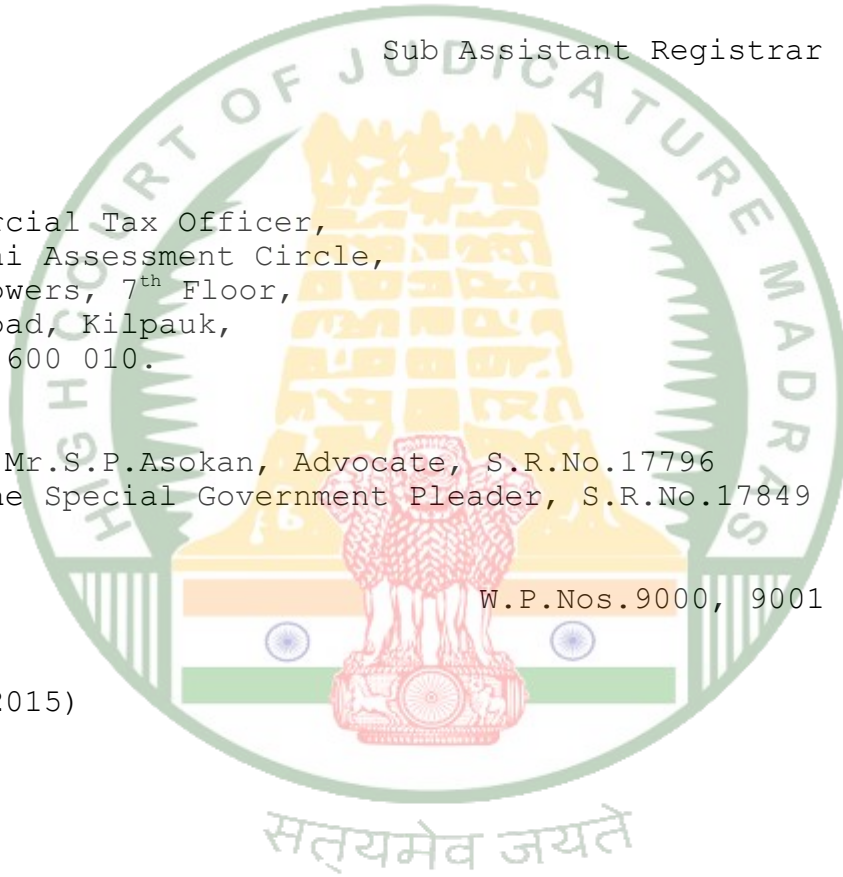
To

The Commercial Tax Officer,
Aminjikarai Assessment Circle,
Dowlath Towers, 7th Floor,
Taylors Road, Kilpauk,
Chennai - 600 010.

+3cc's to Mr.S.P.Asokan, Advocate, S.R.No.17796
+1cc to the Special Government Pleader, S.R.No.17849

W.P.Nos.9000, 9001 & 9002 of 2015

SSI (CO)
CA(08/04/2015)



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