IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.9035 of 2015
and
M.P.No.1 of 2015

Tvl.Track Shoes Private Limited,
represented by its Managing Driector,
Venkat Rao,
No.4/287, Kudrathur Main Road,
Kovur, Chennai - 600 101. ...Petitioner

vs.

The Commercial Tax Officer,
Iyyappanthangal Assessment Circle,
No.5/44, Valluvar Salai,
Ramapuram, Chennai - 600 089. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the respondent in his impugned proceedings in TIN No.33531382244/2007-08 dated 12.02.2015 and quash the same.

For Petitioner : Mr.J.Ravikumar

For Respondent : Mr.A.N.R.Jayapratap
Additional Government Pleader (T)

O R D E R

With the consent of either side, this Writ Petition is taken up for final disposal at the admission stage.

2. Petitioner has come forward with this writ petition seeking to quash the impugned Assessment Order dated 12.02.2015 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 petition has to be allowed and that the alternative remedy is not a bar for entertaining the writ petition.

Accordingly, this Writ Petition is allowed. The impugned order is set aside. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gm

To

The Commercial Tax Officer,
Iyyappanthangal Assessment Circle,
No.5/44, Valluvar Salai,
Ramapuram, Chennai - 600 089.

1 CC to Mr.J.Ravikumar, Advocate SR.No. 18560

1 CC to Spl. Government Pleader, SR.No. 17748

W.P.No.9035 of 2015
and M.P.No.1 of 2015

KK (CO)
PSI (10.04.2015)