IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 30.03.2015
CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.9095 and 9096 of 2015
and
M.P.Nos.1 and 1 of 2015

M/s.Sanghi Trading Corporation
represented by its Partner
Mr.Suresh Kumar Sanghi
No.17-A, Sembudoss Street,
Chennai - 600 001. ... Petitioner in both W.Ps.

vs.

The Assistant Commissioner (CT),
Esplanade Assessment Circle,
No.116, Angappanaicken Street,
Chennai - 600 001. ... Respondent in both W.Ps.

Writ Petitions filed under section 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the respondent in TIN:33430080171/2011-12 and TIN:33430080171/2012-13 dated 18.03.2015 and quash the same as illegal, contrary to the provisions of the Act.

For Petitioner : Mr.T.Pramodkumar Chopda

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

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C O M M O N O R D E R

Heard Mr.T.Pramodkumar Chopda, learned counsel for petitioner and Mr.A.N.R.Jayapratap, learned Additional Government Pleader (Taxes). With the consent of both the parties, these writ petitions are taken up for final disposal at the admission stage itself.

2. Petitioner is a registered dealer and assessee on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'Act 2006'). A VAT Audit was conducted at the petitioner's business place on 22.10.2013 and 30.10.2013. Based on the said audit, the respondent issued notices dated 09.02.2015 proposing to reverse the claim of input tax credit as also proposing to levy penalty on the wrong claim of input tax under Section 27(4) of the Act. The petitioner submitted their reply on 13.02.2015 enclosing the documents in support of the same.

However, without considering the objections of the petitioner, the respondent passed the impugned orders.

3. The petitioner has challenged the impugned orders on the ground of violation of principles of natural justice and that the same are contrary to the law laid down by this Court in the case of Althaf Shoes (P) Ltd., Vs. Assistant Commissioner (CT) reported in (2012) 50 VST 179 (Mad). In the said decision, this Court considering somewhat an identical situation, the only difference being in the said case it was pertaining to refund and in the instant case, it pertains to Input Tax Credit, has held as follows:

> "As already pointed out, the circular issued by the Commissioner clearly states that so long as the vendor is found to be a registered dealer on the files of the Revenue, the claim of the assessee for refund could not be rejected nor delayed. As already pointed out, the Revenue does not deny, as a matter of fact, that the assessee's vendors are all registered dealers on the files of the Revenue and the assessee had also given the TIN number of these vendors. When such particulars are available, it is for the Revenue to take necessary action against the vendors, who had not remitted tax collected by them to the State. Without taking recourse to that, I do not think that the Revenue could deny the claim of the assessee."

4. Learned Additional Government Pleader (Taxes) also does not dispute the legal position. Since the impugned assessment orders are only with regard to the reversal of Input Tax Credit, that too, solely based upon the verification with regard to the vendor, the same could not have been done. In the light of the decision referred supra and for all the above reasons, the petitioner is entitled to succeed.

Accordingly, these writ petitions are allowed and the impugned orders are quashed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Esplanade Assessment Circle,
No.116, Angappanaicken Street,
Chennai - 600 001.

+1 cc to Spl.Government Pleader,T,SR.17850

+1 cc to Mr.T.Pramodkumar Chopda, Advocate,SR.17555.

gj(co)
krd 11/4 W.P.Nos.9095 and 9096 of 2015