IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.9148, 9149 and 9150 of 2015
and
M.P.Nos.1, 1 and 1 of 2015

M/s.Hevea Furniture & Interiors Pvt. Ltd.,
represented by its Director,
51-A, Iyamperumal Street,
Royapettah, Chennai - 600 014. ...Petitioner in all W.Ps.

vs.

The Assistant Commissioner (CT),
Royapettah Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028. ...Respondent in all W.Ps.

Writ Petitions filed under section 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN/33630781662/2011-12, TIN/33630781662/2012-13 and TIN/33630781662/2013-14 and quash the impugned orders dated 27.02.2015 as the same are passed contrary to section 19(1) of the TNVA Act r/w Rule 10(2) of the TNVAT Rules.

For Petitioner : Mr.P.Rajkumar

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

COMMON ORDER

Heard Mr.P.Rajkumar, 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'). The officers of the Enforcement Wing inspected the petitioner's place of business on 16.09.2014, 29.09.2014, 30.09.2014 and 01.10.2014. Based on the said inspection, the respondent issued notices dated 31.12.2014 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 06.02.2015. 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(CS-II)

//True Copy//

Sub Assistant Registrar

gm

To

The Assistant Commissioner (CT),
Royapettah Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028.

1 CC to the Government Pleader, SR.No. 17845

W.P.Nos.9148, 9149 and 9150 of 2015

SR (CO)
PSI (10.04.2015)