IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Writ Petition Nos.34659 to 34661 of 2013
and
M.P.Nos.1 +1+1 of 2013

M/s.Aurum Trading India (P) Ltd.,
rep. By its Director S.V.Sunilkumar
No.113/114, Sir Thiagaraya Road
T.Nagar, Chennai - 600 017 .. Petitioner
in all the petitions

Vs.

The Assistant Commissioner (CT)
T.Nagar (East) Assessment Circle
No.46, Greenways Road, Chennai - 600 028 .. Respondent
in all the petitions

Prayer in W.P.No.34659 of 2013: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of writ of certiorari to call for the records on the file of the respondent in TIN:33481562449/2009-10 dated 31.10.2013 and quash the same as illegal, contrary to the provisions of the Act, principles of natural justice and fair play and law laid down by this Court.

Prayer in W.P.No.34660 of 2013: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of writ of certiorari to call for the records on the file of the respondent in TIN:33481562449/2010-11 dated 31.10.2013 and quash the same as illegal, contrary to the provisions of the Act, principles of natural justice and fair play and law laid down by this Court.

Prayer in W.P.No.34661 of 2013: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of writ of certiorari to call for the records on the file of the respondent in TIN:33481562449/2011-12 dated 31.10.2013 and quash the same as illegal, contrary to the provisions of the Act, principles of natural justice and fairplay and law laid down by this Court.

For Petitioners : Mr.T.Pramodkumar Chopda
For Respondents : Mr.A.N.R.Jayaprathap
Additional Govt. Pleader (Tax)

C O M M O N O R D E R

The petitioner has filed the writ petition challenging the order of the respondent dated 31.10.2013.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 during the assessment years 2009-10, 2010-11 and 2011-12. The petitioner has challenged the impugned order primarily on the ground that the respondent ought to have taken into account the registration of the seller, namely M/s.Arihant Trading Company, which was a registered dealer during the relevant point of time. It is the contention of the petitioner that even as per the Commercial Tax Department website M/s.Arihant Trading Company was a registered dealer at that point of time and the registration certificate was cancelled only with effect from 27.10.2011 and not from 23.09.2009.

3. The learned counsel for the respondent is unable to refute the contention raised by the learned counsel for the petitioner.

4.This Court in a similar issue in W.P.No.6980 of 2015, on 12.03.2015, allowed the writ petition. The relevant paragraph in the said order is extracted hereunder:

> “3. The petitioner has challenged the impugned order on the ground of violation of principles of natural justice and that the same is 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 order is 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 and accordingly, this writ petition is allowed and the impugned order is quashed. No costs. Consequently, the connected miscellaneous petition is closed. ”

5. Even though the petitioner wanted to canvass the other issues with regard to the impugned order, this Court is not inclined to accept the same. Insofar as the other points are concerned, it is open to the petitioner to raise them before the appellate authority.

6. In the result, the writ petition is partly allowed and the impugned order dated 31.10.2013 is set aside to the extent indicated above. It is open to the petitioner to prefer an appeal before the appellate authority on or before 30.04.2015. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

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

+2 cc's to Mr.T.Pramodkumar Chopra,Advocate,sR.18288.

+1 cc to Spl.Government Pleader, SR.18642.

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krd 20/4

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