BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :15.09.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P(MD).No.16729 of 2015
and
M.P(MD)No.1 of 2015

M/s.KNS NG Holding,
Rep. By its Partner Jeevananth
42, Vinayagar Koil Street,
Ramakrishnapuram, Karur. ...Petitioner

Vs.

The Assistant Commissioner(CT),
Karur(East) Karur. ...Respondent

This Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in TIN No.33273767520/2013-2014, dated 17.03.2015 and quash the same and further direct the respondent to pass assessment order afresh by considering the relevant records and thereafter to pass order afresh with regard to the reversal of Input Tax Credit in term of the decisions of this Hon'ble Court reported in 50 VST 179, 59 VST 256, 60 VST 283 & 82 VST 457 after affording an opportunity of being heard to the petitioner as contemplated under Section 27(4) of the Tamil Nadu Value Added Tax Act.

For petitioner : Mr.S.Karunakar
For Respondent : Mr.R.Karthikeyan,
Additional Government Pleader

ORDER

The Writ Petition has been filed praying for a Writ of Certiorarified Mandamus calling for the records of the respondent in his proceedings in TIN No.33273767520/2013-2014, dated 17.03.2015 and quash the same and further direct the respondent to pass assessment order afresh by considering the relevant records with regard to the reversal of Input Tax Credit in term of the decisions of this Hon'ble Court reported in [2012]50 VST 179, [2013] 59 VST 256, [2013]60 VST 283 & [2015] 82 VST 457 after affording an opportunity of being heard to the petitioner as contemplated under Section 27(4) of the Tamil Nadu Value Added Tax Act.

2. Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondent.

3. By consent, the Writ Petition itself is taken up for final disposal.

4. The case of the petitioner Concern is that they are distributors for FMCG products and an assessee on the file of the respondent holding TIN No.33273767520 under the provisions of the Tamil Nadu Value Added Tax Act 2006 and they are regularly filing the monthly returns and claiming input tax credit against the genuine purchases effected from registered dealer within the State as per Section 19(2) of the Act. The entire purchases are covered by necessary invoices and supported by Bank Statement through which payment has been duly received by the selling dealers. While the matter stood thus, the respondent had issued notice in TIN.33273767520/2013-2014, dated 27.01.2015 stating that from verification of report it was found that the petitioners have claimed Input Tax Credit for the purchases made by them from Tvt.Tara Communication(33101122472), Nestle India Ltd., (33381662608) and Tv. Pasupathi Agencies(33563661291), but, on verification of report it was found that the seller had not reported and paid tax to the Department as Input Tax Credit claimed by the petitioners and therefore called the petitioners to pay the wrong claim of Input Tax Credit of Rs.3,51,230/- along with levy of penalty under Section 27(4) of the TNVAT Act. After receiving notice, due to family circumstances, the petitioners were not able to file a reply to the said notice. Moreover, it is the specific case of the petitioners that they have effected purchase of goods only from registered dealers within the State and all the purchases were covered by valid tax invoices as required under Section 19(10-a) of the TNVAT Act along with the purchase bills and other records to prove the fact that there was no wrong claim of Input Tax Credit. But, to the shock and surprise, the respondent had issued the impugned order dated 17.03.2015 confirming his proposal without any justification. On receipt of the said order, the petitioners had rushed to the respondent to enquire about the issuance of the impugned order. But the respondent had expressed his inability to review the impugned order. Hence, the petitioners have come forward with the present Writ Petition for the above stated relief.

5. When the matter is taken up for hearing, the learned counsel appearing for the petitioner Concern submitted that the petitioners have effected purchase of goods only from registered dealers within the State and all the purchases were covered by valid tax invoices as required under Section 19(10-a) of the TNVAT Act along with the purchase bills and other records to prove the fact that there was no wrong claim of Input Tax Credit and they are prepared to produce all the invoices before the respondent. He further submitted that by setting aside the impugned order, the matter may be remitted back to the respondent with a direction to consider the petitioner's case afresh.

6. The learned Additional Government Pleader objected for the same.

7.Considering the facts and circumstances of the case and also considering the submission made by the learned counsel appearing for the petitioner, this Court is inclined to set aside the impugned order.

8. In the result, the Writ Petition is allowed and the impugned order of the respondent dated, 17.03.2015, is hereby set aside and the matter is remitted back to the respondent for fresh consideration, with a direction to the petitioner to pay 30% of the disputed tax amount, within

a period of two weeks from the date of receipt of a copy of this order. The respondent is directed to consider the issue afresh based on the invoices to be produced by the petitioner, within a period of four weeks thereafter. Consequently, connected miscellaneous petition is closed. No Costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner(CT),
Karur(East) Karur.

+1cc to Mr.S.Karunakar, Advocate SR.No.54329

W.P(MD).No.16729 of 2015
15.09.2015

pm
NS/GSV-PM/06.10.2015 : 3P/3C