IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2016

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THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.14777 of 2016

and

WMP.No.12905 of 2016

M/s.Indroyal Furniture Company (P) Ltd
rep. by its Director J.Vijayan

...Petitioner

Vs.

The Assistant Commissioner (CT)
Royapettah Assessment Circle,
No.43, Greenways Road,
R.A.Puram, Chennai 600 028.

...Respondent

Writ petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records of the respondent in TIN/33960720904/2008-09 dated 28.01.2016 and quash the same as illegal and erroneous contrary to the law laid down by the Hon'ble Court in 50 VST 179 and 60 VST 283.

For Petitioner : Mr.V.Sundareswaran
For Respondent : Mr.S.Manoharan Sundaram,
Addl.Govt.Pleader

ORDER

Challenging the assessment order dated 28.01.2016 passed by the respondent, the petitioner has filed the present writ petition.

2. It is the case of the petitioner that the petitioner is a registered dealer in furniture. For the Financial Year 2008-2009, the respondent completed the assessment by way of deemed assessment. Thereafter, based on the audit report, the respondent issued a notice dated 04.06.2013 proposing to reverse the input tax credit (ITC) to the tune of Rs.2,99,958/- on the ground that the sellers had not disclosed the same and paid the sales tax at their end in Form I. On receipt of the said notice on 27.12.2015, the petitioner filed a detailed objection on 05.01.2016 before the respondent stating that the input tax

credit was availed on the basis of the valid invoice and therefore, requested to drop the proposal, as per the decisions of this court reported in (2012) 50 VST 179 (Mad) (Althaf Shoes (P) Ltd. v. Assistant Commissioner (CT), Valluvarkottam) and (2013) 59 VST 256 (Mad) (M/s.Jinsanan Distributors v. C.T.O, Chintadripet). However, the respondent passed the impugned order dated 28.01.2016, confirming the proposal for reversal of ITC and consequently, directing the petitioner to pay the demanded amount along with penalty. Aggrieved over the same, the petitioner is before this court with the present writ petition for the above stated relief.

3. When the writ petition came up for consideration, learned counsel for the petitioner submitted that in similar circumstances, this Court, in the decision reported in 2016-TIOL-489-HC-MAD-VAT (Britannia Industries Ltd v. the Deputy Commissioner (CT)-III (FAC), Chennai-8) has set aside the impugned order and allowed the writ petition. He prayed for the similar order in this writ petition also.

4. Learned Additional Government Pleader, who took notice for the respondent, also fairly concedes the same.

5. In the decision cited on the side of the petitioner in 2016-TIOL-489-HC-MAD-VAT (Britannia Industries Ltd v. the Deputy Commissioner (CT)-III (FAC), Chennai-8), the issue involved was to reverse the Input Tax Credit along with the consequential imposition of penalty by the Assessing Officer and the same was ultimately decided in favour of the Assessee, following the earlier judgment reported in 2013 (60) VST 283 (Mad) (Sri Vinayaga Agencies v. the Assistant Commissioner (CT), Chennai and another). For better appreciation, the relevant paragraphs of the said decision are extracted hereunder:

> "4. In the judgment reported in 2013 (60) VST 283 (Mad) [cited surpa], in paragraph No.9, it has been held as follows:-
>
> > "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, has 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 has been initiated, namely, invoking sub-section (16) of Section19, 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. . . .

6. In view of the dictum laid down by this court, following the orders of this court, the writ petitions are allowed. Since the issue involved in the present writ petitions relates to the payment of VAT and imposition of penalty by the sellers, the writ petitioners are allowed only in so far as the issue involving the payment of VAT by the sellers. So far as the other issues are concerned, since the petitioner has got appeal remedy, it is open to the petitioner to file appeals as against the impugned orders. No costs. Consequently, connected miscellaneous petitions are closed."

The above said decision, in my considered view, will hold good for this writ petition also.

6. Accordingly, the writ petition is allowed and the impugned order dated 28.01.2016 passed by the respondent is set aside, insofar as it relates to the payment of ITC and penalty by the petitioner is concerned. Regarding other issues, if any, it is open to the petitioner to avail the appeal remedy before the authority concerned. No costs. Consequently, connected miscellaneous petition is closed.

rk

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner (CT)
Royapettah Assessment Circle,
No.43, Greenways Road,
R.A.Puram, Chennai 600 028.

+ 1 cc to Mr.V.Sundareswaran, Advocate Sr 24811

+ 1 cc to The Spl.Govt.Pleader (Taxes), High Court, Madras-104.
Sr 25232

KR/8/6/16

W.P.No.14777 of 2016