IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.13125 to 13127 of 2014
and M.P.Nos.1 to 1 of 2014

Tvl.Rajyog Steels,
Rep. by its Proprietor C.Ramesh Kumar,
16/6, Ekambarashwarar Agraharam,
Park Town, Chennai - 600 003. ... Petitioner in all W.Ps

Vs

The Commercial Tax Officer,
Moore Market, South Assessment Circle,
191, NSC Bose Road,
Chennai - 600 001. ... Respondent in all W.Ps

Prayer in W.P.No.13125 of 2014: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in TIN:33110360871/2007-08 dated 30.09.2013 and the consequential proceedings in Letter TIN 33110360871/2007-08 to 2009-10 dated 07.03.2014, quash the same.

Prayer in W.P.No.13126 of 2014: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in TIN:33110360871/2008-09 dated 30.09.2013 and the consequential proceedings in Letter TIN 33110360871/2007-08 to 2009-10 dated 07.03.2014, quash the same.

Prayer in W.P.No.13127 of 2014: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in TIN:33110360871/2009-10 dated 30.09.2013 and the consequential proceedings in Letter TIN 33110360871/2007-08 to 2009-10 dated 07.03.2014, quash the same.

For Petitioner in all W.Ps : Mr.S.Ravee Kumar

For Respondent in all W.Ps : Mr.Manokaran Sundaram
Additional Government Pleader

COMMON ORDER

Heard Mr.S.Ravee Kumar, learned counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondents and with their consent, these writ petitions are taken up for disposal.

2.The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, (TNVAT Act) and the Central Sales Act (CST Act). In these writ petitions, the petitioner has challenged the impugned orders of assessment which are the revised assessment passed under Section 27(1) and (2) of the TNVAT Act for the assessment years 2007-08 to 2009-10. The only reason for revising the ITC is on the ground that the petitioner has effected purchase from the registration cancelled dealers.

3.It cannot be disputed by the learned Additional Government Pleader that an identical issue was considered in a batch of cases in the case in M/s.Jinsasan Distributors vs. Commercial Tax Officer (CT), Chintadripet Assessment Circle, Chennai reported in (2013) 59 VST 256 (Mad), wherein the Court held as follows:

> "13.An almost identical issue was considered by the Supreme Court in State of Maharashtra v. Suresh Trading Company, (1998) 109 STC 439. In that case, the respondents, who were registered dealers under the Bombay Sales Tax Act, 1959, purchased goods during the period from 1.1.1967 to 31.1.1967 from one Sulekha Enterprises Corporation, who is also a registered dealer under the Bombay Sales Tax Act, 1959. The respondents before the Supreme Court resold the goods and claimed certain benefits. That was disallowed by the Sales Tax Officer on the ground that the registration certificate of M/s.Sulekha Enterprises Corporation was cancelled on 20.8.1967, with effect from 1.1.1967. The claim of the respondents therein/the assessees for deduction of the turnover of sales as above was declined and penalty was also imposed. The assessees failed before the appellate authority as well as the Maharashtra Sales Tax Tribunal. The High Court however reversed the decision and upheld the claims of the assessees, holding that disallowing the deductions claimed by the respondents would amount to tax on transactions which were otherwise not taxable. The Supreme Court, while dismissing the appeals filed by the Revenue, held as follows:
>
> > "4.The High Court answered the question in the negative and in favour of the respondents.

The High Court noted that the effect of disallowing the deductions claimed by the respondents was, in substance, to tax transactions which were otherwise not taxable. The condition precedent for becoming entitled to make a tax-free resale was the purchase of the goods which were resold from a registered dealer and the obtaining from that registered dealer of a certificate in this behalf. This condition having been fulfilled, the right of the purchasing dealer to make a tax-free sale accrued to him. Thereafter to hold, by reason of something that had happened subsequent to the date of the purchase, namely, the cancellation of the selling dealer's registration with retrospective effect, that the tax-free resales had become liable to tax, would be tantamount to levying tax on the resales with retrospective effect.

5.In our view, the High Court was right. A purchasing dealer is entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it. Whatever may be the effect of a retrospective cancellation upon the selling dealer, it can have no effect upon any person who has acted upon the strength of a registration certificate when the registration was current. The argument on behalf of the department that it was the duty of persons dealing with registered dealers to find out whether a state of facts exists which would justify the cancellation of registration must be rejected. To accept it would be to nullify the provisions of the statute which entitle persons dealing with registered dealers to act upon the strength of registration certificates."

(emphasis supplied)

14.The Supreme Court in the above case has clearly held that the retrospective cancellation of the registration certificate of the selling dealer can have no effect on the person who acted upon the strength of the registration certificate when it was in force. The Supreme Court further rejected the department's argument that duty is cast on the person who is dealing with the registered dealer to find out whether the registration certificate is valid or cancelled, by stating that such a plea would be against the provisions of the statute.

15.In the present case, it is not in dispute that the registration certificates of the selling dealers have been cancelled with retrospective effect and, therefore, to reverse the input tax credit on the plea that registration certificates have been cancelled with retrospective effect cannot be countenanced. Whatever benefits that has accrued to the petitioners based on valid documents in the course of sale and purchase of goods, for which tax has been paid cannot be declined. The transaction that took place when the registration certificates of the selling dealer were in force cannot be denied to the petitioners/assessees on the above plea. This is contrary to the law laid down by the Supreme Court in the above stated case.

For the foregoing reasons, the notices, revised assessment orders and the provisional assessment order, insofar as it seeks to deny the benefit of input tax credit to the petitioners/assessees only on the ground that the registration certificates of the selling dealers have been cancelled with retrospective effect, are set aside. These writ petitions are allowed, as indicated above."

4.Thus, following the above referred decision and applying the same to the case on hand, the writ petitions are allowed and the impugned orders are quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cse
To

The Commercial Tax Officer,
Moore Market, South Assessment Circle,
191, NSC Bose Road,
Chennai - 600 001.

+3cc's to Mr.S.Raveekumar, Advocate, S.R.No.42293
+1cc to the Special Government Pleader(T), S.R.No.42174

W.P.Nos.13125 to 13127 of 2014
and M.P.Nos.1 to 1 of 2014

GR(CO)
CA(08/08/2016)