IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.13296 of 2014, 17012 and 17013 of 2016

M/s.A to Z Metals,
Rep. By its Proprietor,
Old No.220/4, New No.202/4,
Linghi Chetty Street,
Chennai - 01. ... Petitioner in all the Writ Petitions

Vs.

The Commercial Tax Officer,
Harbour II Assessment Circle,
Chennai - 01. ... Respondent in all the Writ Petitions

PRAYER IN W.P.No.13296/2014: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorari to call for the records of the respondent in TIN 33080021145/2011-12, dated 14.03.2014, and the consequential proceeding in TIN No.33080021145/2011-2012, dated 25.04.2014, quash the same.

PRAYER IN W.P.Nos.17012 and 17013 of 2016: Writ Petitions filed under Article 226 of Constitution of India praying to issue Writ of certiorari to call for the records of the respondent in TIN 33080021145/2013-14 and TIN 33080021145/2014-2015 respectively, dated 07.03.2016, and quash the same.

For Petitioner : Mr.S.Ravee Kumar

For Respondent : Mr.S.Kanmani Annamalai, AGP (T)

COMMON ORDER

Heard Mr.S.Ravee Kumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax) for the respondent, and with the consent of either side, the writ petitions are taken up for disposal.

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 (TN VAT Act). In this writ petition, the petitioner has challenged the orders of assessments for the years 2011-2012, 2013-2014 and 2014-2015.

3. In all these writ petitions, the common issue raised by the petitioner is that the impugned assessments have been completed in total violation of the principles of natural justice. The other issue which is also common in all the writ petitions is as to whether, for the very same reason, the respondent could not have made three deductions under three heads. When the respondent proceeded to issue directions to the petitioner to reverse the Input Tax Credit (ITC) on the ground that he has effected transactions with the registration cancelled dealers, the question would be whether the annexures filed by those dealers could have been taking into consideration for the purpose of reversing the ITC under separate head. On a reading of the pre-assessment notice as well as the impugned order, it is evidently clear that there is a lot of confusion in the minds of the assessing officer and the details are not forthcoming apart from the fact, though the objection was filed by the petitioner in two of the assessment years, the assessing officer stated that the objection has not been received.

4. The legal issue, which has been raised by the petitioner, is covered by the decision in the case of Jinsasan Distributors and others v. The Commercial Tax Officer (CT), Chintadripet Assessment Circle, Chennai, and others (W.P.Nos.12305 of 2012 etc., dated 22.11.2012), wherein this Court has considered the issue as to what is the effect of cancellation of registration certificate of the selling dealers on the purchasing dealers and while deciding the question, it was held as follows:

> "12. Insofar as the cancellation of the registration certificates of the selling dealers is concerned, it is for those selling dealers to canvas the plea as to when it will take effect either on the date of the order or with retrospective effect. Insofar as the petitioners are concerned, they have purchased the taxable goods from registered dealers who had valid registration certificates; paid the tax payable thereon; availed input tax credit; and the assessing officers have passed orders granting such benefit. Therefore, the assessment orders granting input tax credit were validly passed. There was no cancellation of the registration certificates of the selling dealers at that point of time. The petitioners/assessees have paid input tax based on the invoices issued by registered selling dealers and availed input tax credit. The retrospective cancellation of the registration certificates issued to the

> selling dealers cannot affect the right of the petitioners/assessees, who have paid the tax on the basis of the invoices and thereafter claimed the benefit under Section 19 of the TNVAT Act, 2006. They have utilized the goods either for own use or for further sale. At the time when the sale was made, the selling dealers had valid registration certificates and the subsequent cancellation cannot nullify the benefit that the petitioners/assessees availed based on valid documents.”

5. As already pointed out, there is a lot of confusion on the factual aspect as well and had the assessing officer afforded an opportunity of personal hearing to the petitioner, the confusion which has ultimately culminated in the impugned assessment orders could have been avoided.

6. In the light of the above facts, this Court is of the view that the matter requires to be reconsidered by the assessing officer and the assessment should be redone after affording an opportunity of personal hearing to the petitioner.

7. In the result, the writ petitions are allowed and the impugned assessment orders are quashed. Consequently, the matter is remanded back to the respondent for fresh consideration and the respondent shall afford an opportunity of personal hearing, during which, the respondent should inform the petitioner as to the exact points which they will have to answer and the petitioner would be entitled to produce the documents to substantiate their claim and thereafter, the respondent, after considering the submission made by petitioner and the documents and also taking note of the law laid down by this Court in Jinsasan Distributor (supra), proceed to redo the assessment in accordance with law. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer,
Harbour II Assessment Circle,
Chennai - 01.

+1 cc to Spl.Govt.Pleader,sr.44456.

+2 cc to Mr.S.Raveekumar, advocate,sr.44949.(7/9)

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