IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.14028 of 2014
and M.P.No.2 of 2014

M/s.Sujana Universal Industries Limited
Rep. by its Manager - S.Kannan,
No.6/9, Damodaran Street,
Chetput, Chennai - 600 031. .. Petitioner

Vs

The Assistant Commissioner (CT),
Egmore-II Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai - 600 031. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in his impugned proceedings of the respondent made in TIN:33751502597/2011-12 dated 02.05.2014, quash the same in so far as it pertains reversal of ITC for the reason that the turnover reported by the selling dealer is lesser than the turnover reported by the petitioner is against the decision rendered in (2013) 60 VST 283 in the case of Sri Vinayaga Agencies vs. Assistant Commissioner (CT), Chennai and another.

For Petitioner : Mr.S.Rajasekar

For Respondents: Mr.Manokaran Sundaram
Additional Government Pleader

ORDER

Heard Mr.S.Rajasekar, learned counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondents and with their consent, the writ petition is taken up for disposal.

2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act (TNVAT Act) and in this writ petition, the petitioner has challenged the order of assessment under the TNVAT Act for the year 2011-12. The only issue which is canvassed in this writ petition is that the impugned order directing the reversal of Input Tax Credit for the reason that the turnover reported by the selling dealer is lesser than the turnover reported by the petitioner.

3.It cannot be disputed by the learned Additional Government Pleader appearing for the respondent that this very issue has been settled by this Court in the case of Sri Vinayaga Agencies vs. Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and another reported in (2013) 60 VST 283 (Mad), wherein the Court while considering all the circumstances held that at the time of filing the self-assessment return under Section 22(2), the petitioner-dealer had followed Rule 10(2) of the Tamil Nadu Value Added Tax Rules, 2007 and therefore, could not be said to have wrongly availed of input tax credit wrongly. Section 19(1) states that input tax credit can be claimed by a registered dealer, if he establishes that the tax due on such purchase has been paid by him in the manner prescribed and that was acceptd at the time when the self-assessment was made. The pre-revision notices and the orders clearly stated that the petitioner-dealer had paid the tax to the selling dealer. If that be the case, the petitioner's case squarely fell under the proviso to Section 19(1) of the Act. It was another matter that the selling dealer had not paid the collected tax. The liability had to be fastened on the selling dealer and not on the petitioner-dealer which had shown proof of payment of tax on purchases made. The orders were liable to be set aside.

4.By applying the decision to the impugned proceedings, it has to be held that the assessment made on the ground that the selling dealer has reported less turnover cannot be sustained. That apart, the reason assigned in the impugned order is that the petitioner did not produce the records before the Officer at the time of inspection can hardly be a ground to assess the petitioner to tax on the said ground.

5.In the light of the above, the writ petition is allowed and the issue involved in this case is decided in favour of the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

cse

To

The Assistant Commissioner (CT),
Egmore-II Assessment Circle,
No.88, Mayor Ramanathan Salai,
Chennai - 600 031.

1 cc to Special Government Pleader, sr.42183

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kra 30.08.2016