IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2016

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.17869 to 17871 of 2015
and
M.P.Nos.1,1 and 1 of 2015

M/s.B.N.T. Innovations Private Limited,
represented by its Director,
AC Block, No.123, Second Avenue,
Anna Nagar, Chennai-600 040. .. Petitioner in all writ petitions

Vs.

The Assistant Commissioner (CT) FAC
Arumbakkam Assessment Circle,
7th Floor, Daulath Towers,
No.59, Taylors Road,
Chennai-600 010. .. Respondent in all writ petitions

These writ petitions are filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorari to call for the impugned proceedings of the respondent in TIN 33931460788/2011-2012, TIN 33931460788/2012-2013 and TIN 33931460788/2013-2014 respectively and quash the impugned orders dated 15.5.2015 as the same is passed contrary to section 19(1) of the TNVAT Act read with Rule 10(2) of the TNVAT Rules and also contrary to the law laid down by the Madras High Court in the decisions in the case of M/s.Althaf Shoes (P) Ltd reported in 50 VST 179, in the case of M/s.Sri Vinayaga Agencies reported in 60 VST 283, in the case of Aassan Global Trade in W.P.Nos.25996 to 25998 of 2014 and also in the case of M/s.Infiniti Wholesale Limited in W.P.No.9265 of 2013.

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For Petitioner : Mr.P.Rajkumar in all W.Ps

For Respondent : Mr.Manokaran Sundaram, AGP in all W.Ps.

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COMMON ORDER

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader, appearing for the respondent. With the consent of either side, these writ petitions are taken up for disposal.

2 The petitioner is the manufacture of woven garments and knit garments and is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act). The challenge in these writ petitions are the orders of assessment passed by the respondent for the years 2011-12, 2012-13 and 2013-14. Though there are several issues in the orders of assessment, the challenge in these three writ petitions pertain only to the alleged difference in the turnover of annual scrutiny of monthly returns of buyer and seller.

3 The respondent issued notices dated 12.12.2014, stating that on verification of Annexure-I filed by the petitioner for the said periods with reference to Annexure-II of the other dealers (selling dealer), it was found that the petitioner has claimed ITC as higher, but the selling dealer had reported lesser sales and paid lesser tax. Therefore, the respondent stated that there is difference between the ITC claimed by them and the tax paid by the suppliers. The difference in turnover was indicated in those notices. The petitioner was given time to submit their objections.

4 The petitioner had submitted their objection dated 2.1.2015, stating that the claim for ITC made by them was made in good faith based on the amounts actually paid by them to the dealers as per the invoices raised by them and they are not aware that the returns filed by them did not match the purchases made by them. Therefore, the petitioner requested the respondent to provide the list of such dealers where the tax remitted by them does not match the amount paid by them and on receipt of details, they will follow the matter with them to rectify the difference and do the needful.

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5 Thereafter, the respondent issued another notice dated 2.2.2015, making the same allegation and enclosing the annexure giving difference of tax details. The annexure contains the names of seller, value of purchase, VAT paid and the details in respect of buyer and seller. On receipt of this notice dated 2.2.2015, the petitioner submitted their objections dated 19.2.2015, wherein, apart from explaining the predicament they undertook to reconcile the matter, they requested the respondent to provide full details. The respondent did not refer to the objections given on 2.1.2015, but referred to the objection

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given on 19.2.2015, which was in response to the notice dated 2.2.2015 and the only reason assigned by the respondent is that the reply given by the petitioner is vague and the benefit could not be transferred to the dealers.

6 In my view, the reason assigned by the authority for rejecting the petitioner's objection is wholly untenable. In fact, the authority has failed to consider the tenor of the objection given by the petitioner, who is willing to cooperate with the department to rectify the difference and do the needful. Therefore, the respondent ought to have directed the petitioner to produce proof to show that they have effected payment to the selling dealer for the goods purchased and thereafter proceed to investigate into the matter. Having not done so, the impugned orders definitely call for interference.

7 In the light of the above, these writ petitions are partly allowed and the findings rendered by the respondent in the impugned orders with regard to Point No.2 (difference in turnover of annual scrutiny of monthly returns of buyer and seller) is set aside and the said issue alone is remanded for fresh consideration by the respondent. The petitioner shall appear before the Assessing Officer within a period of three weeks from the date of receipt of copy of this order and produce proof to show that they have effected payment to the selling dealer, with other connected records to establish their case. On production of those records, the respondent shall consider the same and thereafter, proceed in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT) FAC
Arumbakkam Assessment Circle,
7th Floor, Daulath Towers,
No.59, Taylors Road,
Chennai-600 010.

+1cc to Mr.P.Rajkumar, Advocate Sr.32258
+1cc to Special Government Pleader sr.32590

W.P.Nos.17869 to 17871 of 2015

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