IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 08.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.17980 of 2015 &
MP No.1 of 2015

1 M/s.Gurudev Enterprises
Rep.by its Proprietor Hansraj Bhothara
[ PETITIONER ]

Vs

The Assistant Commissioner (CT)
Vallalar Nagar Assessment Circle
116, Angappa Naicken Street
Chennai 600 001. [RESPONDENT]

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of certiorarified mandamus to call for the records of the respondent herein in TIN 33561160825/2011-12 dated 27.02.2015 to quash the same with the direction to the respondent to redo the assessment along with their objections dated 21.11.2014.

For Petitioner : Mr.P.Kumar

For Respondent : Mr.Manokaran Sundaram
Additional Government Pleader

O R D E R

Heard Mr.P.Kumar, learned Counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned counsel appearing on behalf of the respondent and with the consent of learned counsel appearing on either side, this writ petition is taken up for final disposal.

2.The petitioner who is a registered dealer on the file of the respondent under the provisions of Tamill Nadu Vat Act, 2006 (hereinafter referred to as the 'VAT Act 2006' ), deals with iron and Steel Scraps. The challenge in this Writ Petition is to an order of assessment dated 27.02.2015.

3.A notice was issued to the petitioner on 01.08.2014, based on an inspection conducted by the Enforcement Wing Officials on 03.03.2014. It is alleged that during the course of inspection, certain defects were found, which pertains to the assessment for the year 2011-12,viz. difference in the claim of ITC while verifying the Annexure-I of the dealer with that of Annexure-II of the other end dealer i.e., selling dealer. The details thereof were all enclosed, from which it is seen that three of the Companies were Government Undertaking and two were blue-chip Companies. The petitioner submitted their reply on 21.11.2014, enclosing the xerox copies of the invoices and furnished all details pertaining to their sellers, all details pertaining to the sales, etc. The enclosures along with reply to the show cause notice have been filed in page Nos. 3 to 93 of the typed set of papers, containing all relevant documents such as invoices, Bank Statement etc.

4.The respondent without affording an opportunity of personal hearing pointed out that on verification of the other end dealers (selling dealers), it is proved that the selling dealers have not filed returns or reflected the sales effected to the dealer during the month and hence the claim of input tax credit by the petitioner is not eligible and liable to be reversed as per section 19(6) of the VAT Act and the petitioner also liable for penalty under section 27(4) of the Act.

5.The only question which requires to be considered in the instant case is whether the input tax credit availed by the petitioner could have been directed to be reversed on the grounds assigned by the respondent. The only answer to the question should be 'negative', in the light of the various decisions of this Court, rendered on the same point.

6.At this juncture, it would be beneficial to refer to the two decisions of this Court viz.(i) ALTHAF SHOES (P) LTD., v. ASSISTANT COMMISSIONER (CT), VALLUVARKOTTAM ASSESSMENT CIRCLE,CHENNAI [(2012) 50 VST 179 (Mad) and (ii) SRI VINAYAGA AGENCIES v. ASSISTANT COMMISSIONER (CT), VADAPALANI-I ASSESSMENT CIRCLE, CHENNAI AND ANOTHER [(2013) 60 VST 283 (Mad)].

7.In the case of ALTHAF SHOES (P) LTD., cited supra, the petitioner was a dealer and exporter of finished leather and other products, who claimed refund of ITC under Section 18 (2) of the VAT Act in respect of the exports made. Though the refund was granted, subsequently notice was issued seeking to withdraw the relief on the ground that its dealer had not reported the sales turnover and remitted tax and an order was passed, withdrawing the relief granted and levying penalty. While considering the said case, it was held that the circular issued by the Commissioner clearly states that so long as the vendor is found to be a registered dealer on the files of the Revenue, the claim of the assessee for refund could not be rejected nor delayed. Revenue in the said case did not deny, as a matter of fact, that the assessee's vendors are all registered dealers on the files of the Revenue and the assessee had also given the TIN number of these vendors. When such particulars are available, it is for the Revenue to take necessary action against the vendors, who had not remitted tax collected by them to the State. Without taking recourse to that, the Revenue could not deny the claim of the assessee. Going by Rule10(2) of TN Vat Rules read along with section 19(1) of the TN Vat Act, it is clear that so long as the purchasing dealer has complied with the requirements as given under Rule 10(2), the claim of the purchasing dealer cannot, by any length of reasoning, be denied by the Revenue. The mere fact that the Revenue had not made an assessment on the assessee's vendor, per se, cannot stand in the way of the assessing officer considering the claim of the assessee under section 19 of the Tamil Nadu Value Added Tax Act. A reading of the circular issued by Commissioner along with the provisions of the Act makes it clear that there is nothing repugnant in the said circular issued by the Commissioner as a head of the Department as regards the provisions of the Act on input-tax credit claim. Holding so, allowed the writ petition and in the case of SRI VINAYAGA AGENCIES (cited supra), the petitioner was dealer in lubricants, purchasing lubricants from a registered dealer. On inspection, it was found that the vendor / dealer had not filed monthly returns nor paid tax to the Department. Though the petitioner had paid tax to the selling dealer, revision notice was issued proposing that the ITC should be reversed on the failure of the selling dealer in paying the tax. Allowing the said writ petition, it was 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 accepted 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, it was held that the petitioner's case therein squarely fell under the proviso to Section 19 (1) of the Act. Further, 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 thus set-aside.

8.The above referred decisions were taken into consideration by this Court in the case of INFINITI WHOLESALE LIMITED v. THE ASSISTANT COMMISSIONER (CT) KOYAMBEDU ASSESSMENT CIRCLE [2015 (82) VST 457]. In that case also, notice was issued by the Assessing Officer, stating that there was a short reporting of turnover by the registered vendors of the petitioner therein and those vendors were not registered dealers and they had not paid tax and yet the petitioner therein had taken credit. After following the decisions in the case of ALTHAF SHOES (P) LTD., and in the case of SRI VINAYAGA AGENCIES, this Court allowed the Writ Petition and held that the exercise of jurisdiction of the Assessing Officer is ex-facie arbitrary and illegal. The law laid down by this Court in the aforementioned decisions have been reiterated by this Court repeatedly in several decisions, yet the Commercial Tax Department appear to have not taken note of the legal position and the instant case is also one such case, where the Assessing Officer abdicated his duties and failed to take into consideration the settled legal position.

9.Hence, for all the above reasons, the impugned order is held to be unsustainable in law and liable to be set aside. Accordingly, the Writ Petition is allowed and the impugned order is set aside. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Vallalar Nagar Assessment Circle
116, Angappa Naicken Street
Chennai 600 001.

+1cc to Special Government Pleader Sr.30762
+1cc to R.Kumar, Advocate Sr.30609

W.P.No. 17980 of 2015

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srg 23/06/2016