

In the High Court of Judicature at Madras

Dated : 30/9/2016

<i>Date of Reserving the order</i>	<i>Date of Pronouncing the order</i>
12.09.2016	30.09.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.24587 and 24588 of 2015
and MP.Nos.1 and 1 of 2015

Sri Kamatchi Gas Service
Kancheepuram.

...Petitioner in
both WPs

Vs

The Assistant Commissioner (CT),
Kancheepuram Assessment Circle,
Kancheepuram.

...Respondent in
both WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the respondent in his proceedings in TIN : 33381620122/2013-14 and TIN : 33381620122/2014-15 and quash the orders respectively dated 25.5.2015 and 6.7.2015 made therein.

For Petitioner : Mr.P.Rajkumar
For Respondent : Mr.K.Venkatesh, GA (T)

COMMON ORDER

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate (Taxes) appearing for the respondent.

2. The petitioner, which is a registered dealer on the file of the respondent, was originally a proprietorship concern with one Mr.K.Punniakoti Mudaliar as its sole proprietor. He is the father of one Mr.K.Srikanth - the present proprietor of the petitioner herein. The proprietorship concern is a LPG distributor of M/s.Indian Oil Corporation Limited, which has also been registered on the file of the respondent Department under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the Act).

3. Due to advanced age and illness of the father of the present proprietor of the petitioner, the proprietorship concern was converted into a partnership firm and the present proprietor of the petitioner namely Mr.P.Srikanth was inducted as a partner with effect from 1.4.2008 and the firm was registered on the file of the Registrar of Firms, Kancheepuram. The change in the constitution of the dealer was intimated to M/s.Indian Oil Corporation Limited.

4. While so, the father of the present proprietor of the petitioner died and the present proprietor of the petitioner, being a distributor of LPG, had to carry on business and he has been filing monthly returns and paying necessary taxes in the name of the proprietorship concern, as the name of

the reconstitution of the proprietorship concern into a partnership firm was not intimated to the respondent Department. The petitioner was advised to obtain a fresh registration from the Department and accordingly, the petitioner informed the change in the constitution by letter dated 20.4.2015 and request for allotment of a fresh tax payer identification number.

5. However, the respondent issued notice dated 23.4.2015 stating that the petitioner - M/s.Sri Kamatchi Gas Service was originally registered as a proprietorship concern and the sole proprietor died on 9.9.2013, after which, his son was running the business using the same tax payer identification number allotted to his late father without intimation to the Department and without surrendering the same and proposed to pass best judgment assessment treating the purchases and sales as unregistered purchases and sales.

6. The present proprietor of the petitioner submitted his objections on 28.4.2015 stating the proprietorship concern became a partnership firm with effect from 1.4.2008 and after the demise of his father, it is a proprietorship concern with the son Mr.P.Srikanth as the sole proprietor. The present proprietor of the petitioner pleaded ignorance of the procedural formalities of intimating the Department of every change in the nature and constitution of the dealer. He pointed out that the monthly returns were duly filed and necessary taxes paid without default even after the demise of the original proprietor. He further pointed out that he appeared before the respondent

and offered to surrender the old tax payer identification number and requested for issuance of a new tax payer identification number.

7. Thereafter, another notice was issued by the respondent dated 29.4.2015 for the assessment year 2013-14 stating that such a request is not entertainable. Ultimately, the respondent passed the order of assessment dated 25.5.2015 reversing the claim of input tax credit from 9.9.2013. Subsequently, for the assessment year 2014-15 also, similar orders were passed by order dated 6.7.2015, reversing the entire claim of input tax credit on the ground of filing incorrect and incomplete returns. These orders are challenged in these writ petitions.

8. The learned counsel for the petitioner submitted that for a brief period, the proprietorship concern was converted into a partnership firm and subsequently, on and after 9.9.2013, it is again a proprietorship concern and that merely because the petitioner had not intimated about the change in the constitution of the dealer, that, by itself, cannot be a reason to reverse the input tax credit, especially when the petitioner had been promptly filing the returns for all the assessment years and paying taxes.

9. Referring to Rule 5(3) of the Tamil Nadu Value Added Tax Rules, 2007, it is submitted that the purpose of the Rule is to intimate the Department, so that the Registering Authority can incorporate the changes in the certificate of registration and no further consequences are contemplated

under the provisions of the Act for non furnishing or non intimation of the change in the constitution of the dealer. Therefore, the failure to furnish details of the change in the constitution for a brief period can, at best, be treated as an irregularity and cannot be termed as illegality.

10. The learned Government Advocate (Taxes), referred to the counter affidavit and relied upon Rule 5(4)(b) of the said Rules stating that there is a duty cast upon the dealer to inform the change in constitution and admittedly, the present proprietor of the petitioner has failed to intimate the Department. Furthermore, in terms of Rule 5(2) and (3), the certificate of registration is not transferable and there is a 30 days' time limit stipulated under the Rule to furnish the details of the change to the Registering Authority. Therefore, the learned Government Advocate submitted that the impugned orders are perfectly justified.

11. After hearing the parties elaborately and perusing the materials placed on record, this Court is of the view that the mistake committed by the dealer can be treated only as an irregularity and not an illegality. Rule 5(3) of the said Rules states that whenever there is a change in constitution of the business of the dealer, the said dealer, within 30 days from the date of change in constitution, shall furnish details of the change to the Registering Authority and the Registering Authority, on satisfying itself, shall amend the certificate of registration accordingly.

12. As rightly pointed out by the learned counsel for the petitioner, the

Rule does not contemplate the consequences for non furnishing of information pertaining to change in constitution. The question would be as to whether all the transactions done during the interregnum could be invalidated for such a reason.

13. Rule 5(4)(b) of the said Rules states that when a registered dealer dies, his executor, administrator or legal representative shall, within 30 days of his taking charge as such executor, administrator or legal representative, furnish details in Form E prescribed under the Rules to the Registering Authority. Therefore, the Statute recognizes the executor, administrator or legal representative of the deceased registered dealer to continue the registration and all that is required is that the details shall be furnished in statutory format.

14. Admittedly, the present proprietor of the petitioner is the son of the deceased original proprietor and he is the sole legal heir and he has been carrying on business. Furthermore, the registered dealer is M/s.Sri Kamatchi Gas Service, which is a distributor for M/s.Indian Oil Corporation Limited. The transactions done by the dealer cannot be doubted, as the LPG is supplied as a part of public distribution system. Therefore, the returns submitted by the petitioner could not have been disbelieved. In addition to that, the dealer has been filing returns regularly, which have been accepted by the Department. Therefore, for a mere irregularity, penalizing the dealer by denying the claim of entire input tax credit is an arbitrary exercise of power.

15. As non furnishing of information, as required under Rule 5(3) of the said Rules, does not contemplate a situation to disbelieve all transactions especially transactions as done in the present case, the impugned orders reversing the input tax credit are wholly unsustainable. The respondent does not take a stand that on account of the non intimation, the registration has been canceled nor any such step has been taken. The interpretation is that on the demise of the father of the present proprietor of the petitioner, the registration becomes infructuous. This Court is not convinced with such a stand taken by the respondent, especially when even prior to the demise of the father of the present proprietor of the petitioner, the business was reconstituted as a partnership firm and it was recognized by their principal - M/s.Indian Oil Corporation Limited.

16. Thus, the mistake committed by the petitioner can be treated only as an illegality, for which, a capital punishment cannot be imposed on the dealer. Furthermore, it is stated that a fresh registration has been granted in the name of the present proprietor of the petitioner on 25.6.2015 and only for the two assessment years, this problem has arisen. Therefore, this Court, exercising its extraordinary jurisdiction, is convinced to state that the reason for reversing the input tax credit, as done in the impugned orders, is not sustainable.

17. Accordingly, the writ petitions are allowed and the impugned orders are set aside. No costs. Consequently, the above MPs are closed.

30/9/2016

Internet : Yes

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T.S.SIVAGNANAM,J

RS

To
The Assistant Commissioner (CT), Kancheepuram Assessment Circle,
Kancheepuram.

P.D.Common Order in
WP.Nos.24587 & 24588 of
2015 & MP.Nos.1 and 1 of
2015

30/9/2016