IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.06.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.19810 to 19813 of 2016 (4 cases)
and
W.M.P.Nos.17089 to 17092 of 2016

Tvl. Yasmine Traders,
rep. by its Proprietor,
No.6, Kuberaganapathy Street,
Mathiazhagan Nagar,
Chennai - 600 050. ...Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (CT)
Anna Nagar Assessment Circle,
Chennai. ...Respondent in all W.Ps.

Prayer in W.P.No.19810 of 2016

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the order of the respondent, dated 13.05.2016, in TIN No.33381325727/2010-11, and to quash the same.

Prayer in W.P.No.19811 of 2016

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the order of the respondent, dated 13.05.2016, in TIN No.33381325727/2011-12, and to quash the same.

Prayer in W.P.No.19812 of 2016

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the order of the respondent, dated 13.05.2016, in TIN No.33381325727/2012-13, and to quash the same.
and

Prayer in W.P.No.19813 of 2016

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the order of the respondent, dated 13.05.2016, in TIN No.33381325727/2013-14, and to quash the same.

In all W.Ps.

For Petitioner :Mr.Adithya Reddy

For Respondent :Mr.S.Manoharan Sundaram
Additional Government Pleader

COMMON ORDER

Heard Mr.Adithya Reddy, learned counsel appearing for the petitioner, and Mr.S.Manoharan Sundaram, learned Additional Government Pleader, accepting notice for the respondent, and with their consent, the Writ Petitions are taken up for final disposal.

2. The petitioner is a dealer in Iron and Steel, and registered on the file of the respondent, under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as 'TNVAT Act'). The petitioner has challenged the assessment orders for the years 2010-11 to 2013-14.

3. Though there are different issues, in the orders of assessment, in all these Writ Petitions, the petitioner has challenged only one issue, viz., the reversal of ITC, under Section 19 (15) of TNVAT Act on the purchases from alleged registration cancelled dealer.

4. The respondent issued a notice, dated 02.03.2015, based upon VAT Audit, conducted in the place of business of the petitioner on 25.08.2014, stating that the petitioner has effected purchases from registration cancelled dealer, and proposed to reverse Input Tax Credit (ITC) availed by the petitioner, by invoking power under Section 19 (15) of TNVAT Act. The petitioner sent a reply for all the notices, stating that, if the purchases are found to be made from registered dealers, and their TIN numbers are available with the Revenue, for non payment of tax by the vendors, the Revenue has to take necessary action only against the vendors, and that cannot be a reason to reverse ITC availed by the petitioner. The petitioner, in support of their contention, enclosed a copy of the decision of this Court, in the case of (Jinsasan Distributors Vs. Commercial Tax Officer, Chennai) reported in [(2013) 59 VST 256 Madras]. The respondent, while considering the reply, conveniently, has not referred to the date, on which, vendors' registration was cancelled. To establish the fact that the petitioner's vendors have been filing returns even after the date of purchase, the petitioner has produced sample copies of the returns filed by their vendors, from which, it is seen that,

after purchases effected by the petitioner, their vendors have been filing returns.

5. It is submitted by the learned counsel appearing for the petitioner that cancellation of the vendors' registration has occurred only in the year 2015 with retrospective effect, and this is the reason, why the respondent/Assessing Officer, while dealing with the petitioner's reply, has deliberately omitted to mention the date on which, registration of the petitioner's vendors were cancelled. In fact, the petitioner has specifically pointed out this aspect in para No.4 and Grounds C of the affidavit, filed in support of this Writ Petition.

6. Law on the subject is well settled in the decision rendered in Jinsasan's case, referred above, and has been followed in several other decisions of this Court. It was pointed out that, 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 of 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 of 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 of based on valid documents.

7. In the light of the above, the reason assigned by the respondent, in the impugned orders of assessment for reversal of ITC has held to be held to be not sustainable and bad in law.

8. Accordingly, the Writ Petitions are allowed, the impugned orders of assessment are quashed insofar as it relates to reversal of ITC under Section 19 (15) of TNVAT Act is

concerned, and in respect of other issues, it is open to the petitioner to workout their remedy as per the provisions of the Act, or to pay the tax, as demanded. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

sd

To
The Assistant Commissioner (CT)
Anna Nagar Assessment Circle,
Chennai.

1 cc to Special Government Pleader, (Taxes), sr.32019
1 cc to Mr.Adithya Reddy, Advocate, sr.31747

Writ Petition Nos.19810 to 19813 of 2016

rsy co
kra 28.06.2016