IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.30541 and 30542 of 2015
and
M.P.Nos.1 & 1 and 2 & 2 of 2015

Tvl.V.R.Nachimuthu (CBE),
Represented by S.R.Arvind Kumar,
Managing Partner,
15, Varadarajan Street, Gandhi Nagar,
Erode. .. Petitioner in both W.Ps

Vs

The Assistant Commissioner (CT)
Brough Road,
Erode. .. Respondent in both W.Ps

Prayer in W.P.No.30541 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in TIN:33483002996/2010-11 dated 19.08.2015, received on 24.08.2015, and quash the same as being without jurisdiction and contrary to the decision of the Hon'ble Court in W.P.Nos.13384 and 13385 of 2015 dated 31.04.2015 and hence invalid and illegal.

Prayer in W.P.No.30542 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the file of the respondent in TIN:33483002996/2011-12 dated 19.08.2015, received on 24.08.2015, and quash the same as being without jurisdiction and contrary to the decision of the Hon'ble Court in W.P.Nos.13384 and 13385 of 2015 dated 31.04.2015 and hence invalid and illegal.

For Petitioner in both W.Ps : No appearance

For Respondent in both W.Ps : Mr.Manokaran Sundaram
Additional Government Pleader

COMMON ORDER

None appears on behalf of the petitioner. Heard Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondent.

2.The petitioner is before this Court for the second time in respect of the same assessment years, namely, 2010-11 and 2011-12 under the provisions of the Tamil Nadu Value Added Tax Act, 2006. Earlier the petitioner had approached this Court and filed writ petitions in W.P.Nos.13384 and 13385 of 2015 seeking for quashing the orders of assessment dated 03.04.2014 for the years 2010-11 and 2011-12. Those writ petitions were allowed by common order dated 30.04.2015 and the operative portion of the order reads as follows:

> "4.It is not in dispute that the petitioner has submitted all the necessary details, more particularly the information such as Registration Certificate Numbers under the TNVAT Act of the sellers and dealers. Therefore, when the petitioner has initially discharged his burden as per Section 19 (10)(a) of the TNVAT Act, showing that the goods have been subjected to tax at an earlier stage, the respondent ought to have considered the same. Although he is liable to apply his mind, without doing so, by merely resorting to the proposal of reversal of Input Tax Credit, over ruling all the objections, without giving any other reasons, has wrongly come to the conclusion. Therefore, it is necessary to extract the above ratio, covering the issue, which states as follows :
>
> > "In these two cases, it is accepted by the assessing officer that for a pre-revision notice, the petitioner has given objections. The objections have to be considered by the assessing officer on their own merits. However, the assessing officer proceeded to the effect that :
> >
> > > "... Their objections were examined in detail. The dealers should have placed all the facts before the inspecting officials. But they did not do so. They had given an admitted statement to the effect that the purchases were made from unregistered dealers and sold and that they were not in a position to produce purchase bills. In as much as they had

> admitted and even paid tax to some extent as per their statement now I find no reason to deviate from the proposals."
>
> If the reasoning stated by the enforcement officials is taken as correct reason, there is no need for the assessing officer to be there to frame the assessment. The Enforcement Wing officials themselves would have framed the assessment. Under the statutory provisions, it is expected from the assessing officer to consider the objections and either accept or reject the same by giving valid reasons by applying his mind. The above extract of the reasoning given by the assessing officer is nothing than desperation to pass an order on the basis of D3 proposal. There are ever so many cases where D3 proposals have been deviated by the assessing officer after applying their mind. Hence, this court is of the view that the assessment orders are passed without considering the objections and by taking note of the D3 proposal of the enforcement officers. Therefore, the orders of assessment have to be set aside and the same are set aside..."

> In the light of the above ratio, the impugned orders are set aside, as the Assessment Orders are passed without considering the objections and by merely taking note of the proposal of the Enforcement Officer.
>
> 5.Accordingly, the orders of Assessment are set aside and the Assessing Officer is directed to re-consider each one of the objections raised by the petitioner and give reason, except the reason that they have given in the statement before them with reference to the material made available and with reference to their accounts.
>
> 6.With the above directions, the matters are remanded back to the Assessment Officer to re-frame the assessment in accordance with law and both the writ petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed. There is no order as to costs."

3.However, on remand, the petitioner did not filed any objections. Nevertheless, the legal issue as to whether under the circumstances stated in the impugned order, whether ITC can be directed to be reversed is no longer res integra and it will be beneficial to refer the decision of this Court in the case of Althaf Shoes (P) Ltd., vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai - 6 reported in (2012) 50 VST 179 (Mad), wherein it has been held as follows:

> "As already pointed out, 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. As already pointed out, the Revenue does 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, I do not think that the Revenue could deny the claim of the assessee."

4.Further, the above referred decision was followed 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 Hon'ble Court 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, 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.

5.By applying the above legal principles to the facts of the case, the only conclusion that can be arrived is to hold that the impugned orders are not sustainable. Accordingly, the writ petitions are allowed and the impugned orders are quashed. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Brough Road,
Erode.

+1cc to the Special Government Pleader Sr.42182
+1cc to Mr.C.Venkatraman, Advocate Sr.42360

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and
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srg 12/08/2016