IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.32015 of 2015
and
M.P.No.1 of 2015

M/s Sakthi Vadivelan Enterprises,
rep by V. Arumugam, Partner,
No.10/1, Meeya Sahib II Street,
Chepauk,
Chennai - 600 005 ... Petitioner

Vs.

1. The Assistant Commissioner (CT),
   Chepauk Assessment Circle,
   Sire Mansion,
   First Floor,
   No.621, Anna Salai,
   Chennai - 600 005

2. The Commissioner of Commercial Taxes,
   Azhilagam, Chepauk,
   Chennai - 600 005 ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN No.33750660152/2012-2013 dated 23.07.2015 and quash the same as passed in Violation of principles of natural justice and also contrary to the Circulars dated 4.11.2013 and 11.8.2015 issued by the second respondent and also against the order dated 5.8.2015 passed by the Hon'ble High Court in W.A.Nos.1038 to 1040 of 2015 and the order dated 25.8.2015 passed in WP No.25637 of 2015.

For Petitioner : Mr.P. Rajkumar

For respondents : Mr.S. Kanmani Annamalai
Additional Government Pleader

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorari to call for the impugned proceedings of the first respondent in TIN No.33750660152/2012-2013 dated 23.07.2015 and quash the same as passed in Violation of principles of natural justice and also contrary to the Circulars dated 4.11.2013 and 11.8.2015 issued by the second respondent and also against the order dated 5.8.2015 passed by this Court in W.A.Nos.1038 to 1040 of 2015 and the order dated 25.8.2015 passed in WP No.25637 of 2015.

2. According to the petitioner, the order of the first respondent cannot stand for the reason that it had wrongly reversed the input tax credit on the erroneous reason that there was no tax paid by the petitioner on the value addition overlooking the fact that the petitioner had paid VAT on the value Addition. Further, according to the petitioner, the respondents have not considered the Commissioner's Circulars dated 04.11.2013 and 11.08.2015. It would be relevant to extract paragraphs 4 and 5 of the Circular of the Commissioner of Commercial Taxes dated 11.08.2015, which read as follows:

> "4. In the reference second cited, it has already been informed that for operation of Section 19(20), the following three steps need to be followed:
>
> (i) Identification of cases in which huge ITC is accumulated on account of sale price being lower than the purchase price.
>
> (ii) The above facts have to be ensured by verifying the purchase and sale price per unit.
>
> (iii) If the above two are detected in a given return, the quantum of ITC which exceeds the output tax shall be reversed.
>
> Further, section 19(20) has nothing to do with levy of tax on the discount which has to be dealt with independently as per the provisions of the act and circumstances of each case.
>
> 5.In order to give effect for reversal of undue enrichment of ITC, section 19(20) should be given effect by correlating the sale price of goods with the corresponding

purchase price. If the sale price is lesser than the purchase price, then the amount of ITC in excess of output tax should be reversed".

3. Further, according to the learned counsel for the petitioner, without considering the averments mentioned in the Circulars and without affording due opportunity of personal hearing to the petitioner, the first respondent had passed the impugned order.

4. Mr.S. Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents, submitted that the respondents are duty bound to follow the Circulars, touching the matter in issue and could have granted appropriate relief to the petitioner.

5. This Court, in an identical matter, in W.P.No.25637 of 2015, by order dated 25.08.2015, disposed of the writ petition, setting aside the impugned order therein. Following the ratio laid down by this Court in the said judgment, the impugned order dated 23.07.2015, passed by the first respondent, is liable to be set aside and accordingly, the same is set aside. The petitioner is permitted to file necessary objections to the notice and on such filing of objections, within two weeks, the same shall be considered and appropriate orders be passed by the respondents, on merits and in accordance with law, in the light of the Circulars, referred to above, and also taking into account Section 19(20) of the TNVAT Act, after giving due opportunity to the petitioner, within a period of six weeks from the date of receipt of a copy of this order. With these observations, the writ petition is disposed of. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner (CT),
Chepauk Assessment Circle,
Sire Mansion,
First Floor,
No.621, Anna Salai,
Chennai - 600 005

2. The Commissioner of Commercial Taxes,
   Azhilagam, Chepauk,
   Chennai - 600 005

+1cc to Mr.P. Rajkumar, Advocate, S.R.No.18122
+1cc to the Special Government Pleader(T), S.R.No.18231

W.P.No.32015 of 2015

MSM(CO)
CA(31/03/2016)