IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.36673 of 2015
& M.P.No.1 of 2015

Kolkata Trading Company,
Represented by its Proprietor,
Prakash Goenka, Nehru Nagar,
No.10 Manali New Town,
Chennai - 103 ... Petitioner

Versus

The Assistant Commissioner (CT),
Cholavaram Assessment Circle,
22, Jawaharlal Nagar, First Street,
Chennai - 52 ... Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari to call for the records of the respondent in TIN:33841088406/2014-15, dated 20.07.2015 and to quash the same.

For Petitioner : Mr. R.Kumar

For Respondent : Mr. S.Kanmani Annamalai,
Additional Government Pleader

O R D E R

Heard Mr.R.Kumar, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent. By consent of the learned counsel for both sides, the 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 the Tamil Nadu Value Added Tax Act, 2006, (hereinafter will be referred to as "the Act") has filed this writ petition, challenging the order of assessment, dated 20.07.2015, for the assessment year 2014-15.

3. On verification of the monthly returns filed by the petitioner, for the said year, the respondent alleged that the petitioner has effected purchases from the dealer, who has not filed their monthly returns and paid Value Added Tax (VAT) as per the provisions of the said Act. Therefore, a notice was issued on 02.07.2015, stating that the petitioner's selling dealer has not filed returns, therefore, the Input Tax Credit has been proposed to be reversed. The petitioner, in their objections, stated that the selling dealer has been periodically filing E-returns and remitting tax, which have been accepted by their Assessing Officer, namely, Kilpauk Assessment Circle, and to establish the same, the petitioner procured copies of the E-Returns, tax paid receipts, bank statements of the petitioner, showing payments to the sellers and filed along with the objections. However, the respondent did not do any verification and rejected all these documents by stating that the dealer has not filed their monthly returns electronically, which is mandatory.

4. The learned counsel for the petitioner would submit that only in respect of one month, the petitioner's selling dealer had filed manual returns and all other returns were E-Returns and all the E-Returns were accepted, along with the cheques, by the selling dealer's Assessing Officer. In such circumstances, the respondent, without causing proper verification has confirmed the proposal in the notice.

5. However, the larger issue would be as to whether at all this can be a ground for effecting reversal of the Input Tax Credit.

6. This issue is no longer res integra, in the light of the decision of this Court in the case of Infiniti Wholesale Limited (formerly known as Woolworths Wholesale (India) Private Limited v. Assistant Commissioner (CT), Koyambedu Assessment Circle, Koyambedu, Chennai, reported in (2015) 82 VST 457 (Mad), wherein this Court, after taking into consideration the earlier decisions, held as follows:-

> "... (iii) That the input-tax credit availed of by the dealer could not have been proposed to be reversed or reversed on the grounds stated by the Assistant Commissioner, i.e., that the selling dealer had not filed returns or not paid taxes or they were unregistered dealers on their registrations were retrospectively cancelled. The exercise of the jurisdiction by the Assistant Commissioner itself was ex facie arbitrary and the proceedings were not only vitiated by serious procedural infirmities, but were arbitrary and unreasonable and without jurisdiction and illegal...."

7. It is brought to the notice of this Court that the aforesaid decision has been affirmed by the Hon'ble Division Bench, as the appeal filed by the Revenue against the said order in Writ Appeal No.775 of 2016 was dismissed by the Hon'ble Division Bench, on 09.09.2016.

8. In the light of the above, the writ petition is allowed and the impugned orders are quashed. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

srk

To

The Assistant Commissioner (CT),
Cholavaram Assessment Circle,
22, Jawaharlal Nagar, First Street,
Chennai - 52.

+1cc to Mr.R.Kumar, Advocate, S.R.No.52459
+1cc to the Special Government Pleader(T), S.R.No.52417

W.P.No.36673 of 2015
& M.P.No.1 of 2015

ALA(CO)
CA(28/09/2016)