IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2016

CORAM:

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

Writ Petition No.36754 to 36757 of 2015
& M.P.Nos.1 to 1 of 2015

Tvl. Elite, Rep. By its Proprietor,
Mr. Ramesh Bishnoi,
No.393, Sydenhams Road,
Choolai, Chennai - 112 ... Petitioner in all W.Ps.

Versus

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

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:33480501657/2009-10; 2010-11; 2011-12 and 2012-13, all dated 21.09.2015 and to quash the same.

For Petitioner in all W.Ps. : Mr. S.Raveekumar, for,
Mr. S.Prabhakaran

For Respondent in all W.Ps. : Mr. S.Kanmani Annamalai,
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.S.Raveekumar, learned counsel, appearing for Mr.S.Prabhakaran, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent, in all the writ petitions.

2. In these writ petitions, the petitioner has challenged the orders of assessment passed under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter will be referred to as “the Act”) for the assessment years 2009-10, 2010-11, 2011-12 and 2012-13.

3. Though there are several issues, which were pointed out in the notices issued by the respondent, dated 12.06.2015, the only issue which has been agitated before this Court is

with regard to the reversal of the Input Tax Credit on the purchases made by the petitioner from the registration cancelled dealers. The petitioner's explanation is that on the date when they effected purchases, the registration was valid and the two dealers with whom they had business are not registration cancelled dealers at the time of purchases and the petitioner has further stated that they are not Bill Traders. The petitioner filed VAT Returns of the dealers along with the tax paid amount, requested the respondent to accept the same and drop the proceedings. The Assessing Officer, while completing the assessments, stated that the registration certificate of those selling dealers have been cancelled with retrospective effect, for their persistent defaults. Therefore, the transaction made with those dealers, irrespective of the period, is not established as genuine transactions. Further, the Assessing Officer proceeded to disbelieve the petitioner's transaction on the ground that the petitioner has not furnished any documentary evidence for the physical movement of the goods, other than the copy of the Returns of the selling dealers to establish the physical occurrence of the transactions. In the absence of clarity, their contention was held to be non-sustainable.

4. The issue as to whether the Input Tax Credit could be denied on the ground that the selling dealers registration has been cancelled is no longer res integra and is covered by a decision of this Court, in the case of Jinsasan Distributors v. Commercial Tax Officer (CT), Chintadripet Assessment Circle, Chennai, reported in (2013) Vol. 59 VST 256 (Mad). Nevertheless, in the instant case, the initial burden of proof to show the genuineness of transaction is on the dealers. Since the respondent has disbelieved the nature of transaction and doubted its bonafide, he has reversed the Input Tax Credit. Therefore, in my view, a prima facie proof has to be produced by the petitioner to state that they are entitled for Input Tax Credit. If a doubt has arisen in the mind of the Assessing Officer and if that doubt is genuine, then, it is not a bar to call upon the petitioner to produce certain contemporaneous documents to prove the nature of transactions.

5. However, it is seen that in the show cause notice there was no such proposal and stated that the petitioner should produce the documentary evidence for physical movement of goods. Therefore, this Court is of the view that the assessments can be re-done, after the petitioner is given an opportunity to produce necessary records.

6. Hence, the writ petitions are partly-allowed and with regard to the reversal of the Input Tax Credit of the purchases made by the petitioner from the registered cancelled dealers alone is set-aside and the matters are remanded back to the respondent, who shall direct the petitioner to appear

for a personal hearing, within a period of three weeks from the date of receipt of a copy of this order, and on such date, the petitioner shall produce the records and documents to establish the genuineness of the transactions as well as the movement of goods. On such documents being filed, the respondent shall verify the same and re-do the assessments, only on this head, on merits and in accordance with law, by passing a speaking order. No costs. Consequently, the connected MPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

srk

To

The Assistant Commissioner (CT),
Choolai Assessment Circle,
Chennai.

+1cc to the Special Government Pleader(T), S.R.No.52411

W.P.No.36754 to 36757 of 2015
& M.P.Nos.1 to 1 of 2015

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