

In the High Court of Judicature at Madras

Dated : 23.6.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.21572 to 21577 of 2016
and
WMP.Nos.18450 to 18455 of 2016

Tvl.Santhilal & Co., rep.
by its Partner J.Santhilal ...Petitioner (in All)

Vs.

The Assistant Commissioner (CT),
Shevapet (North) Assessment
Circle, Shevapet, Salem. ...Respondent (in All)

PETITIONS under Article 226 of The Constitution of India
praying for the issuance of Writs of Certiorari to call for the
records on the files of the respondent respectively in TIN :
33832740176/2009-10; TIN : 33832740176/2010-11; TIN :
33832740176/2011-12; TIN : 33832740176/ 2012-13; TIN :
33832740176/2013-14, all dated 13.5.2016 and TIN :
33832740176/2014-15 dated 7.9.2015, and quash the same as being
without jurisdiction and authority of law and contrary to the
principles of natural justice.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.V.Haribabu,
Addl.Govt.Pleader

COMMON ORDER

Mr.V.Haribabu, learned Additional Government Pleader takes
notice for the respondent. Heard both. By consent, the writ
petitions are taken up for final disposal.

2. The petitioner, which is a registered dealer under the
provisions of the Tamil Nadu Value Added Tax Act, 2006
(hereinafter referred to as the Act) and the Central Sales Tax
Act, 1956 on the file of the respondent, is engaged in the
business of general goods and has challenged the orders of
assessment passed by the respondent for the years from 2009-10
to 2014-15.

3. The Officials of the Enforcement Wing inspected the place of business of the petitioner on 5.1.2015, 6.1.2015 and 7.1.2015 and based on their report, the respondent issued show cause notices dated 30.4.2015 for the relevant assessment years proposing to revise the total and taxable turnover on two grounds namely (i) reversal of input tax credit under Section 19(15) of the Act and (ii) reversal of input tax credit under Section 27(2) of the Act due to other end dealers not reported their sales turnover in Annexure II. On receipt of the show cause notices for all the assessment years, the petitioner submitted their objections.

4. On a perusal of the objections, it is evidently clear that the petitioner gave detailed objections and apart from factual issues, the petitioner referred to the decisions of this Court with regard to both the issues. Apart from the above two issues, there was a proposal to levy penalty under Section 27(4) of the Act. With regard to this proposal, the petitioner stated that there is no escapement of taxable turnover and that when the returns based on accounts were accepted by the Assessing Authority, penalty cannot be levied. In this regard also, the petitioner referred to the decisions of this Court.

5. However, the respondent, in a most cryptic and arbitrary manner, did not discuss any of the objections pointed out by the petitioner nor referred to the decisions relied upon nor stated as to how those decisions are not applicable. This is a classical case that apart from the action of the respondent being arbitrary and unreasonable, the respondent has abdicated his statutory duties. This Court is inclined to make this observation because the impugned orders should speak for themselves and it is a settled legal position that by way of a counter affidavit, the respondent cannot substitute or supplant reasons, which are not found in the impugned orders of assessment.

6. So far as the issue relating to reversal of input tax credit under Section 19(15) of the Act is concerned on the ground that the registration certificates of the dealers, from whom the petitioner purchased goods, have been cancelled, they are held to be not a ground to reversal of input tax credit of the purchasing dealer in the decision of this Court in the case of Sri Vinayaga Agencies Vs. Assistant Commissioner (CT) [reported in (2013) 60 VST 283] and this decision was followed by this Court in the case of Infiniti Wholesale Limited Vs. Assistant Commissioner [reported in (2015) 82 VST 457].

7. At this stage, it will be useful to refer to the operative portions of the said order in (2015) 82 VST 457 (cited supra), which are as follows :

"22. In the case of Althaf Shoes (Pvt) Ltd. Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai-6 reported in [2012] 50 VST 179 (Mad.), the petitioner was a dealer and exporter of finished leather and other products, who claimed refund of ITC under Section 18(2) of the VAT Act respect of the exports made. Though the refund was granted, subsequently notice was issued seeking to withdraw the relief on the ground that its dealer had not reported the sales turnover and remitted tax and an order was passed, withdrawing the relief granted and levying penalty. While considering the said case, it was held that 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. Revenue in the said case did 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, the Revenue could not deny the claim of the assessee. Going by Rule 10(2) of TN Vat Rules read along with Section 19(1) of the TN Vat Act, it is clear that so long as the purchasing dealer has complied with the requirements as given under Rule 10(2), the claim of the purchasing dealer cannot, by any length of reasoning, be denied by the Revenue. The mere fact that the Revenue had not made an assessment on the assessee's vendor, per se, cannot stand in the way of the assessing officer considering the claim of the assessee under section 19 of the Tamil Nadu Value Added Tax Act. A reading of the circular issued by Commissioner along with the provisions of the Act makes it clear that there is nothing repugnant in the said circular issued by the Commissioner as a head of the Department as regards the provisions of the Act on input-tax credit

claim. Holding so, allowed the writ petition.

23. In the case of Sri Vinayaka Agencies [2013] 60 VST 283 (Mad.), the petitioner was dealer in lubricants, purchasing lubricants from a registered dealer. On inspection, it was found that the vendor/dealer had not filed monthly returns nor paid tax to the Department. Though the petitioner had paid tax to the selling dealer, revision notice was issued proposing that the ITC should be reversed on the failure of the selling dealer in paying the tax. Allowing the said writ petition, it was 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, it was held that the petitioner's case therein squarely fell under the proviso to Section 19(1) of the Act. Further, 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 thus set-aside."

8. Therefore, the proposal made by the respondent to reverse the input tax credit under Section 19(15) of the Act is not tenable.

9. The other issue is with regard to reversal of input tax credit under Section 27(2) of the said Act stating that the other end dealers have not reported sales turnover. Even in this regard, there is no discussion as to how such an issue was taken up by the respondent for consideration and there is no material borne out even in the show cause notices. Therefore, the

proposal to reverse the input tax credit under Section 27(2) of the said Act is also erroneous and not sustainable.

10. With regard to levy of penalty, admittedly there is no allegation that there is any escapement of taxable turnover and when the books were accepted by the Authority, the question of levy of penalty does not arise. In this regard, it will be beneficial to refer to the decision of the Supreme Court in the case of State of Madras Vs. S.G.Jayaraj Nadar & Sons [reported in (1972) 28 STC 700].

11. In the light of the above, the impugned orders are held to be unsustainable. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matters are remitted back to the respondent for fresh consideration. The respondent is directed to consider the detailed objections including the decisions relied upon by the petitioner pertaining to each of the issues and pass a reasoned order on merits and in accordance with law. No costs. Consequently, the above WMPs are closed.

rs

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner (CT),
Shevapet (North) Assessment Circle,
Shevapet, Salem.

+ 1 cc to Mr.R.Senniappan, Advocate Sr 35358

+ 1 cc to The Spl.Govt.Pleader (Taxes) High Court, Mds-104.
Sr 35439

KR/12/7/16

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&

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