IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2016

CORAM

THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.40227 of 2015
and M.P.No.1 of 2015

M/s.Gem Edible Oils Private Limited
rep by its Director
5/221, Kovai Road,
Karegoundampalayam Post,
Annur - 641 653. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Avinashi Assessment Circle,
Avinashi. ... Respondent

Petition filed under Article 226 of The Constitution of India praying to issue a writ of certiorari to call for the records of the respondent in impugned proceedings in TIN:33172082879/2014-15 and quash the order dated 09.12.2015 passed therein.

For Petitioner : Mr.B.Raveendran

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

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorari to call for the records of the respondent in impugned proceedings in TIN:33172082879/2014-15 and quash the order dated 09.12.2015.

2.It is the case of the petitioner that the respondent overlooked the fact that if there is a delay on the part of the sellers in not reporting the turnover in the returns and non-payment of applicable taxes, he can only proceed against the sellers and it is wrong on the part of the respondent to revoke ITC at the hands of the petitioner. Further, according to the petitioner, the respondent had committed an error in taking conflicting stand in the notice dated 13.11.2015 and in the order dated 09.12.2015. In the notice dated 13.11.2015, the respondent had proposed to revoke the input tax credit on the ground that the sellers have not reported the sales in their returns. But in the impugned order dated 09.12.2015, the respondent had affirmed the proposal on a totally different ground by mentioning that the sellers M/s.Sakthi Murugan Enterprises (PT) Ltd., have disclosed the transactions and paid applicable taxes, but it was done belatedly.

3.Mr.Raveendran, learned counsel appearing for the petitioner submitted that in similar circumstances, this Court in the judgment reported in [(2013) 60 VST 283 (Mad) [Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani - I, Assessment Circle, Chennai and another] set aside the impugned orders and has held as follows

> "Sub-section (16) of section 19 states that the input-tax credit availed of is provisional. It, however, does not empower the authority to revoke the input-tax credit availed of on a plea that the selling dealer has not paid the tax. It only relates to incorrect, incomplete or improper claim of input-tax credit by the dealer. It is not so in these cases. In the present case, the petitioner-dealer, admittedly, had paid the tax to the selling dealer and claimed input-tax credit and that was accepted at the time when the self-assessment was made. Even the pre-revision notices and the orders under challenge fairly state that the petitioner-dealer had paid tax to the dealer. It is, therefore, for the Department to proceed against the selling dealer for recovery of tax in the manner known to law. The provision under which the present action has been initiated, namely, invoking sub-section (16) of section 19, does not appear to be correct on the admitted facts as above. All the revision orders revising the input-tax credit on the admitted case of tax having been paid to the selling dealer, therefore, are found to be totally incorrect, erroneous and contrary to the provisions of the TNVAT Act and Rules. As a result, all the orders are liable to be set aside."

4.Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax) appearing for the respondent submitted that as against the judgment relied upon by the learned counsel for the petitioner, the State has filed appeals and the Writ Appeals are pending before the Division Bench.

5.However, the learned counsel on either side submitted that the Division Bench has not granted any interim order in the Writ Appeals.

6.In these circumstances, following the judgment reported in [(2013) 60 VST 283 (Mad) [Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani - I, Assessment Circle, Chennai and another], I set aside the impugned order dated 09.12.2015 and the Writ Petition stands allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Avinashi Assessment Circle,
Avinashi.

+ 1 cc to Mr.Raveendran, AdvocateSr.11952
+ 1 cc to Special Government Pleader Sr.12159

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MG(CO)
Eu 08.03.16