IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.24260 & 24261 of 2016

Tvl.Thribovan Enterprises Pvt., Ltd.,
Rep., by its Director,
Mukesh Sharma,
No.2/125, Ponnai Main Road,
New Agrawaram,
Ranipet.
... Petitioner in W.P.24260 of 2016

Sri Balaji Khem Products,
Rep., by its Proprietor,
S.Bhavani,
No.210/5A-1, M.B.T., Road Cross,
Puliyanthangal, (BHEL Post),
Ranipet - 632 406,
Vellore District. ... Petitioner in W.P.24261 of 2016

.Vs.

Assistant Commissioner, (CT)(FAC),
Ranipet SIPCOT Assessment Circle,
Ranipet (SIPCOT). ... Respondent

Common Prayer:

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, call for the records on the files of the respondent in TIN:33814364452/2014-15, TIN:33364364166/2014-15, dated 29.09.2015, and 12.11.2015 respectively and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice and issue such further Writ, order or direction.

For Petitioner : Mr.R.Senniappan in both W.Ps.

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

COMMON ORDER

Heard Mr.R.Senniappan, learned counsel for the petitioner, Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent and with the consent of either side, the writ petitions are taken up for final disposal.

2. The petitioners, who are the registered dealers on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, (TNVAT Act), have filed these Writ Petitions challenging the assessment orders for the year 2014-15. The respondent issued notices, dated 14.08.2015 and 18.08.2015, stating that on cross verification of the 'e'-returns filed by other dealers in the intranet website of the department, it was found that the dealers had effected purchase from other end dealer during 2014-15 and claimed input tax credit. After furnishing those details, as an annexure to the notice, the respondent stated that the purchases have not been accounted for by the dealers at the other end in their monthly returns in Annexure-II for the relevant year. Therefore, the respondent proposed to disallow the ITC, claimed on the mismatch noticed for the relevant year. The petitioner sent a letter dated 27.08.2015, to the other end dealer requesting them to provide annexure I and annexure II as filed in the sales tax return for cross verification from the Sales Tax Department. After obtaining those details, the petitioners have filed their objections before the respondent and also produced the details of the annexure I & annexure II. However, the respondent without any discussion, has rejected the petitioner's objection, as not acceptable and completed the assessment. The manner in which the officer has proceeded to complete the assessment is unsustainable.

3. The legal issue as to whether ITC could have been reversed on the allegation made in the notice, dated 14.08.2015, is no longer res integra and had been considered by this Court in the cases of Althaf Shoes (P) Ltd., vs. Assistant Commissioner (CT)., Valluvarkottam, Assessment Circle, Chennai reported in (2012) 50 VST 179 (Mad); Sri Vinayaga Agencies vs. Assistant Commissioner (CT), Vadapalani-1, Assessment Circle, Chennai reported in (2013) 60 VST 283 (Mad), which had been followed in the case of Infinity Wholesale Ltd., vs. Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai-1, reported in (2015) 82 VST 457 (Mad). At this stage, it would be worthwhile to refer to the operative portion of the order:-

> 22. In the case of Althaf Shoes (Pvt) Ltd., cited supra, 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 in 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 assessees 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 Rule10(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 assessees 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.

In the light of the above discussion and placing reliance on the above referred decisions, the impugned orders are held to be unsustainable. Accordingly, the Writ Petitions are allowed and the impugned assessment orders are quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

pbn

To

Assistant Commissioner, (CT)(FAC),
Ranipet SIPCOT Assessment Circle,
Ranipet (SIPCOT).

+1cc to Mr.R.Senniappan, Advocate, S.R.No.39733

W.P.Nos.24260 & 24261 of 2016

LRS(CO)
CA(29/07/2016)