

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.24265 & 24266 of 2016

M/s.Kothari Industrial Suppliers,
Rep., by its Proprietor, Pankaj Kothari
116/41-B2, Vaithiyanatha Mudali Street,
Chennai - 81.

.. Petitioner in both W.Ps.,

..Vs..

The Commercial Tax Officer,
Tondiarpet Assessment Circle,
20, Kummalamman Koil Street,
Chennai - 81.

.. Respondent in both W.Ps.,

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, call for the records of the respondent in TIN:33151202518/2010-11, and TIN:33151202518/2013-14, dated 10.06.2016, and quash the same.

For Petitioner
in both WPs : Mr.R.Kumar in both W.Ps.

For Respondent
in both WPs : Mr.S.Kanmani Annamalai AGP

COMMON ORDER

Heard Mr.R.Kumar, 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. In these Writ Petitions, the petitioner, who is the registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, (TNVAT Act), has challenged the assessment orders for the years 2010-11 and 2013-14. Notices were issued to the petitioner on 27.10.2015, stating that on verification of the monthly returns in annexure I, it revealed that the petitioner has effected

local purchases from registration cancelled dealers and accordingly, the respondent proposed to reverse the ITC claimed by the petitioner. In fact, these notices dated 27.10.2015, were issued to the petitioner after the earlier Writ Petitions filed by the petitioner challenging the assessment orders in W.P.Nos.11147 & 11148 of 2015, were allowed by order dated 09.06.2015, and the matter remanded to the respondent for fresh consideration. The petitioner submitted their objections on 09.12.2015. In the said objections, the petitioner, apart from denying the allegations and raising factual contention, relied upon the decision of this Court in the case of Althaf Shoes (P) Ltd., vs. Assistant Commissioner (CT)., Valluvarkottam, Assessment Circle, Chennai reported in (2012) 50 VST 179 (Mad); and Infinity Wholesale Ltd., vs. Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai-1, reported in (2015) 82 VST 457 (Mad) and submitted that the decisions squarely apply to the petitioner's case.

3. The respondent while acknowledging the receipt of the objections brushed aside the contention raised only on the ground that the petitioner is not a party in those cases and he cannot rely upon the judgment. At the out set, it has to be pointed out that the observations made by the respondent as regards the effect of the decisions of this Court is wholly erroneous. The petitioner relied upon those decisions in support of the legal contention raised by them that ITC availed by the petitioner cannot be reversed on the circumstances stated by the respondent. However, erroneously, the respondent without understanding the manner in which the judgments have to be interpreted, has abdicated his duty, as an Assessing Officer.

4. At this juncture, it would be beneficial to refer to the two decisions of this Court viz.(i) ALTHAF SHOES (P) LTD., v. ASSISTANT COMMISSIONER (CT), VALLUVARKOTTAM ASSESSMENT CIRCLE, CHENNAI [(2012) 50 VST 179 (Mad) and (ii) SRI VINAYAGA AGENCIES v. ASSISTANT COMMISSIONER (CT), VADAPALANI-I ASSESSMENT CIRCLE, CHENNAI AND ANOTHER [(2013) 60 VST 283 (Mad)]].

5. In the case of ALTHAF SHOES (P) 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 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 and in the case of Sri Vinayaga Agencies vs. Assistant Commissioner (CT), Vadapalani-1, Assessment Circle, Chennai reported in (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.

6. The above referred decisions were taken into consideration by this Court in the case of INFINITI WHOLESALE LIMITED v. THE ASSISTANT COMMISSIONER (CT) KOYAMBEDU ASSESSMENT CIRCLE [2015

(82) VST 457]. In that case also, notice was issued by the Assessing Officer, stating that there was a short reporting of turnover by the registered vendors of the petitioner therein and those vendors were not registered dealers and they had not paid tax and yet the petitioner therein had taken credit. After following the decisions in the case of ALTHAF SHOES (P) LTD., and in the case of SRI VINAYAGA AGENCIES, this Court allowed the Writ Petition and held that the exercise of jurisdiction of the Assessing Officer is ex-facie arbitrary and illegal.

7. The law laid down by this Court in the aforementioned decisions have been reiterated by this Court repeatedly in several decisions, yet the Commercial Tax Department appear to have not taken note of the said legal position and the instant case is also one such cases, where the Assessing Officer abdicated his duties and failed to take into consideration the settled legal position.

8. Hence, for all the above reasons, the impugned orders are held to be unsustainable in law and liable to be set aside and accordingly, the Writ Petitions are allowed and the impugned orders are set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Tondiarpet Assessment Circle,
20, Kummalamman Koil Street,
Chennai - 81.

+1cc to Mr.R.Kumar, Advocate Sr.39705
+1cc to the Special Government Pleader Sr.40196

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srg 04/08/2016