In the High Court of Judicature at Madras

Dated : 19.7.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.24945 & 24946 of 2016
& WMP.Nos.21317 & 21318 of 2016

Tvl.Surana Industries Limited, rep.
by its General Manager (Finance &
Accounts)-cum-Authorized Signatory
K.Karthik ...Petitioner in both WPs

Vs

The Assistant Commissioner (CT),
Royapettah-I Assessment Circle,
Chennai-28. ...Respondent in both WPs

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 33730721370/2009-10 and TIN 33730721370/2010-11 both dated 9.3.2016 and quash the same as being without jurisdiction and authority of law and contrary to the principle laid down by this Court in the judgements reported in (2012) 50 VST 179 (Mad) (Althaf shoes (P) Ltd. Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai) and (2015) 82 VST 457 (Infinity Wholesale Ltd. Vs. Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai-107).

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for final disposal.

2. The petitioner is a dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the TNVAT Act, 2006). In these writ petitions, the petitioner has challenged the revised assessment orders under the TNVAT Act, 2006 for the years 2009-10 and 2010-

11. The reason for reversing the input tax credit availed by the petitioner is on the ground that the other end dealer has not filed returns.

3. It is not disputed by the respondent that the legal issue involved in these writ petitions is squarely covered against the Revenue in the light of the decision in the case of Infinity Wholesale Ltd. Vs. Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai-107 [(2015) 82 VST 457] wherein this Court, after taking into consideration the earlier decisions of this Court on the said issue, namely (i) Althaf shoes (P) Ltd. Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai [(2012) 50 VST 179] and (ii) Sri Vinayaga Agencies Vs. Assistant Commissioner (CT) [(2013) 60 VST 283], quashed similar interim orders.

4. At this stage, it will be beneficial to refer to the operative portion of the decision in (2015) 82 VST 457 (cited supra), which reads as follows :

> "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 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 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 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.

23. In the case of Sri Vinayaka Agencies, cited supra, 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."

5. The above decision is squarely applicable to the cases on hand and therefore, the only conclusion that can be arrived at is that the input tax credit availed by the petitioner could not have been reversed on the ground stated by the respondent that the selling dealer has not filed returns or not paid taxes or they were unregistered dealers or their registrations were retrospectively cancelled.

6. Accordingly, the writ petitions are allowed and the impugned orders are quashed. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Royapettah-I Assessment Circle,
Chennai-28.

+1cc to M/S.R.Senniappan, Advocate Sr.40547
+1cc to the Government Pleader Sr.40607

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WMP.Nos.21317 & 21318 of 2016

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srg 29/07/2016