IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.12.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

W.A.No.1464 of 2016
and
C.M.P.No.18262 of 2016

1. The Assistant Commissioner (CT)
   Vadapalani I Assessment Circle,
   Chennai 600 106.

2. The Assistant Commissioner (CT)
   Palayamkottai Assessment Circle,
   Palayamkottai. Appellants/Respondent

Versus

Sri Vinayaga Agencies,
No.4/4B, Nergundram Pathai,
100 Feet Road, Vadapalani, Chennai. Respondent/Petitioner

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 29.1.2013 passed in W.P.No.2036 of 2013 on the file of this court. Petition filed under article 226 of the constitution of India, praying for the issue of a writ of certiorari to call for the records of the impugned order in T/N.33251463587/2008-09 dated 11.01.2013 received on 18.01.2013 by the petitioner herein, quash the same.

For appellants : Mr.Kanmani Annamalai,
Additional Government Pleader (Taxes)

For Respondent : Mrs.Aparna Nandakumar (NA)

JUDGMENT

(Judgment of the court was made by HULUVADI G.RAMESH, J.)

Heard Mr.Kanmani Annamalai, learned Additional Government Pleader (Taxes) appearing for the appellant.

2. The writ appeal is filed challenging the order of the learned Single Judge dated 29.1.2013 in W.P.No.2036 of 2013.

3. In para 9 of the order, the learned Single Judge has observed thus:-

> "Sub-section (16) of Section 19 states that the input tax credit availed is provisional. It, however, does not empower the authority to revoke the input tax credit availed 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. It appears that the petitioner-dealer had paid tax to the dealer and in turn, it is the Dealer against whom the department has to proceed for recovery of tax, but, instead of doing so, proceeded against the assessee. In the circumstances, we are of the view, that there is no scope for interference with the order of the learned Single Judge. The writ appeal is dismissed with liberty to the Department to proceed against the Selling Dealer to whom the payment is said to have been made. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner (CT)
   Vadapalani I Assessment Circle,
   Chennai 600 106.

2. The Assistant Commissioner (CT)
   Palayamkottai Assessment Circle,
   Palayamkottai.

+1cc to the Government Pleader, S.R.No.72055

ssi(CO)
md(19/01/2017)

W.A.No.1464 of 2016