IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

W.A.Nos.69 to 72 of 2016
and
C.M.P.Nos.857 to 860 of 2016

Tvl. Rajyog Steels,
Rep. By its Proprietor C.Ramesh Kumar
16/6, Ekambarashwarar Agraharam,
Park Town,
Chennai – 600 003. ... Appellant in all W.As.

Vs.

The Commercial Tax Officer,
Moore Market, South Assessment Circle,
191, NSC Bose Road,
Chennai – 600 001. ... Respondent in all W.As.

Writ Appeal filed under Clause 15 of Letters of Patent Act, against the common order dated 05.03.2015 made in W.P.Nos.5931 to 5934 of 2015 passed by this Court.

Writ Petitions have been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in TIN.33110360B71/2010-11, 2013-14, 2012-13 and 2011-12, dated 31.12.2014 respectively and to quash the same.

For Appellant : Dr.A.Thiyagarajan,
Senior Counsel

For Respondent : Mr.M.Manohar Sundaram,
Additional Government Pleader

COMMON JUDGMENT
(Judgment of the Court was delivered by S.Vimala, J.,)

The Assessee is the Appellant.

1.1. The Assessee filed return of income under TNVAT Act and CST Act and remitted advance taxes in respect of local sales, interstate sales and also to export oriented units. The petitioner also claimed Input Tax Credit, as per the provisions of Section 19 read with Rule 10 of the TNVAT Act and rules framed thereunder. The assessment was completed and after accepting the returns of the petitioner, proceedings were issued. Subsequently, the Enforcement Wing Authorities inspected the premises and the Respondent issued a notice, proposing to reverse the Input Tax Credit, on the ground that the petitioner has effected purchases from dealers, whose registration certificate had been cancelled. The Assessee sought for copies of the cancellation certificates and the Respondent did not furnish. The Input Cash Credit cannot be reversed, on the ground that the registration certificate of the selling dealer has been cancelled retrospectively and the cancellation cannot have any impact on the ITC of the petitioner. This issue is covered by the Judgment of this Court rendered in W.P.No.13127 of 2014 and other Judgments including 82 STC 409 (Mad), 35 STC 50 (Mad), 93 STC 185 (Mad), 93 STC 185 (SC), etc.

1.2. The notice issued in respect of the Assessment year 2009-10 was repeated in respect of the assessment years 2010-11, 2011-12, 2012-13, 2013-14 on the very same grounds. The request for grant of time to produce documents, on the side of the assessee was not considered by the respondent and thereafter, impugned proceedings were passed.

2. The Assessee filed Writ Petitions, challenging the order dated 31.12.2014, under which, the total and taxable turnover of the assessee was determined and penalty was also imposed, in respect of the Assessment Years 2010-11, 2011-12, 2012-13 and 2013-14.

2.1. The Court, while passing orders in the Writ Petitions, has directed the Assessee to deposit 15% of the tax excluding penalty and in the event of this condition being complied with, the Assessee would be given opportunity to submit its objections/arguments/documents before the Assessing Authority. On this condition, the impugned order of the respondent was set aside.

2.2. Aggireved over the order passed, these writ appeals have been filed.

3. It is the contention of the learned counsel for the Assessee that (a) once the impugned assessment order is set aside, there is no crystallized amount of tax to be payable and therefore, the order directing the assessee to pay 15% of the tax is non-est in law and therefore, the order is not valid; (b) the opportunity of personal hearing cannot be subjected to this invalid condition of deposit of 15% of the tax.

3.1. The contention of the Assessee is that there cannot be reversal of Input Tax Credit, on the ground that registration certificate of the seller had been retrospectively cancelled, as per the reported decision of the Supreme Court, which is binding upon the Respondent also and that the assessment order should not have been passed without giving opportunity of hearing to the Assessee. It is relevant to quote the decision of the Supreme Court reported in 1996 (3) SCALE 536 (State Of Maharashtra vs Suresh Trading Company), from which, it is evident that the legal proposition submitted by the learned counsel for the Assessee is a matter for consideration and the relevant portion of the judgment reads as under:

> "4. ...The condition precedent for becoming entitled to make a tax free resale was the purchase of the goods which were resold from a registered dealer and the obtaining from that registered dealer of a certificate in this behalf. This condition having been fulfilled, the right of the purchasing dealer to make a tax free sale accrued to him. Thereafter to hold, by reason of something that had happened subsequent to the date of the purchase, namely, the cancellation of the selling dealers' registration with retrospective effect, that the tax free resales had become liable to tax, would be tantamount to levying tax on the resales with retrospective effect.
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> 5. In our view, the High Court was right. A purchasing dealer is entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it. Whatever may be the effect of a retrospective cancellation upon the selling dealer, it can have no effect upon any person who has acted upon the strength of a registration certificate when the registration was current. The argument on behalf of the department that it was the duty of persons dealing with registered dealers to find our whether a state of facts exists which would justify the cancellation of registration must be rejected. To accept it would be to notify the provisions of the statute which entitle persons dealing with registered dealers to act upon the strength of registration certificates.

3.4. The decision reported in 18 STC 305 (ADM Stroes vs. Commissioner of Sales Tax) is relied upon to support the proposition that registration cannot be cancelled retrospectively.

3.5. These two decisions go to show that the assessee has an arguable case.

4. Therefore, denial of opportunity of hearing to the assessee would amount to denial of justice to the assessee.

5. This is not a case where quantum of tax payable is in dispute. The very liability to pay the tax is in dispute. Unless and until the quantum of tax is determined, there is no question of payment of any percentage of tax as a pre-condition.

6. Learned counsel for the Revenue would submit that the Assessee himself volunteered in paying 15% of the tax and therefore, he cannot be allowed to fall back upon his own version and he is bound by the admissions made before the Writ Court. This argument is repelled by the learned counsel for the Assessee, submitting that the offer to deposit 15% of the tax was not voluntary and a persual of the order itself would reveal that the offer to deposit 15% of the tax was made involuntarily. The order itself reads that it is the Writ Court, which pointed out that unless and until some portion of the amount is deposited by the petitioner, the Writ Court may not entertain the writ petition (para-4 of the order). Therefore, the contention that the offer to deposit 15% of the tax was voluntary cannot be accepted. Even assuming that it is voluntary, when the order cannot be enforced, there is no point in insisting upon the offer being complied with.

7. The learned counsel for the Assessee has also relied upon the order passed in W.A.Nos.1024 to 1026 of 2015, whereunder, in similar circumstances, the Division Bench of this Court has held that there is no justification on the part of the Writ Court, in giving a direction for making a deposit of 15% of the tax amount, inasmuch as the question of making any deposit or payment would arise only after fresh assessment is made. The same situation prevails in this case also. Therefore, the order passed by the Writ Court has to be set aside. Therefore, the direction issued by the Writ Court, with regard to deposit of 15% of the tax alone is set aside.

8. The Revenue is directed to offer personal hearing and the Assessee shall appear before the Respondent and shall submit the documents and materials, if any and the Respondent is directed to consider the same on merits and in accordance with law, as expeditiously as possible.

9. In the result, the Writ Appeal is allowed to the extent indicated. No costs. Consequently, connected miscellaneous pettiions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Moore Market, South Assessment Circle,
191, NSC Bose Road,
Chennai - 600 001.

+4cc's to Mr.S.Raveekumar, Advocate, S.R.No.4015
+1cc to the Special Government Pleader(Taxes), S.R.No.3554

W.A.Nos.69 to 72 of 2016

BVR(CO)
CA(04/02/2016)