

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 01-09-2016

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

AND

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WRIT APPEAL Nos.946, 947, 948, 949 of 2016, 2123 of 2013, 2259 to 2264 of 2013, 753 of 2016 and 1048/2016 to 1057 of 2016

and

C.M.P.Nos.12228 to 12234 of 2016, 1, 1, 2, 2, 2, 2, 2 of 2013, C.M.P.No.9108 of 2016 and 13713 to 13727 of 2016

THE ASSISTANT COMMISSIONER (CT)
BROADWAY ASSESSMENT CIRCLE CHENNAI.1
...Appellant in WA Nos.946 to 949 of 2016

THE ASSISTANT COMMISSIONER (CT)
CHOO LAI ASSESSMENT CIRCLE CHENNAI.
... Appellant in WA No.2123 of 2013

THE ASSISTANT COMMISSIONER CT
CHENGALPATTU ASSESSMENT CIRCLE NO.2A GST ROAD
CHENGALPATTU
... Appellant in WA No.2259 to 2264 of 2013

THE ASSISTANT COMMISSIONER
(CT) BROADWAY ASSESSMENT CIRCLE CHENNAI.
... Appellant in WA No.753 of 2016

THE COMMERCIAL TAX OFFICER
CHINTADRI PET ASSESSMENT CIRCLE NO. 62
CATHEDRAL ROAD CHENNAI 600 086.
... Appellant in WA Nos.1048 of 2016

THE ASSISTANT COMMISSIONER
(CT) MOORE MARKET (SOUTH) ASSESSMENT CIRCLE
151 NSC BOSE ROAD WAVOO COMPLEX CHENNAI 600 001.
... Appellant in WA No.1049,1057 of 2016

THE ASSISTANT COMMISSIONER (CT)
KOYAMBEDU ASSESSMENT CIRCLE CHENNAI-107
... Appellant in WA No.1050 of 2016

COMMERCIAL TAX OFFICER
SHEVAPET NORTH CIRCLE CHINNERI VAYALKADU
MEYANUR ROAD SALEM.

<https://hcservices.ecourts.gov.in/hcservices/> ... Appellant in WA No.1051 of 2016

THE COMMERCIALTAX OFFICER
T. NAGAR (EAST)ASSESSMENT CIRCLE
GREENWAYS ROAD CHENNAI 600 028

... Appellant in WA No.1052 of 2016

THE COMMERICAL TAX OFFICER
CHINTADRI PET ASSESSMENT CIRCLE NO.62
CATHEDRAL ROAD CHENNAI.600 086

... Appellant in WA No.1053 of 2016

THE COMMERCIAL TAX OFFICER
CHINTADRI PET ASSESSEMENT CIRCLE
CHENNAI 600 002

... Appellant in WA No.1054,1055,1056 of 2016

VS

M/S.BHAIRAV TRADING COMPANY
PRE.BY ITS PROPRIETOR NO.4 FIRST FLOOR
SINGANNANAICKEN STREET PARRYS CHENNAI.1

... RESPONDENT in WA No.946 to 949 of 2016

TVL.MADRAS VENEERS
REP BY ITSELF PARTNER
MR . NIKHIL AGARWAL CH-600 112

... RESPONDENT in WA No.2123 of 2013

TVL REFEX REFRIGERANTS LTD
1/171 OLDMAMALLAPURAM ROAD THANDALAM VILLAGE
TIRUPORUR KANCHEEPURAM DIST

... RESPONDENT in WA No.2259 to 2264 of 2013

M/S. VIJAY SHREE METALS
REP.BY ITS PROPRIETOR V. MANGILAL 26/17 A
MOOKERNALLAMUTHU STREET PARRYS CHENNAI.600 101

... RESPONDENT in WA No.753 of 2016

TVL. JINSASAN DISTRIBUTORS
SHOP NO. 22 IST FLOOR REP BY ITS PROP.
LEELADEVI D.NO. 16 TO 18 WALLER ROAD
CHENNAI 600 002.

... RESPONDENT in WA No.1048 of 2016

TVL. BALAJI ENTERPRISES
REP.BY ITS PROPRIETRIX MRS. PUSHPA.

... RESPONDENT in WA No.1049 of 2016

TVL.NEW ABIRAMI AGENCY
A.PARTNERSHIP CONCERN REP.BY ITS PARTNER
SENTHILNATHAN

... RESPONDENT in WA No.1050 of 2016

TVL.DEVI TRADING COMPANY
D.NO.8/1 AGRAHARAM STREET SHEVAPET
SALEM-02. ... RESPONDENT in WA No.1051 of 2016

TVL. ARISTON AGENCY (LTD)
REP BY ITS DIRECTOR R. SURESH
... RESPONDENT in WA No.1052 of 2016

TVL.JINSASAN DISTRIBUTORS
SHOP NO.22 1ST FLOOR D.NO.16 TO 18 WALLER
ROAD CHENNAI. REP.BY ITS PROPRIETRIX
LEELADEVI,
CHENNAI- 600 002 ... RESPONDENT in WA No.1053 of 2016

TVL R.D.INFOTECH
NO.9 MEERAN SAHIB ST CHINTADRIPET CH REP BY
ITS PROPRIETR S.RAJ KUMAR
... RESPONDENT in WA No.1054,1055,1056, of 2016

TVL.BALAJI ENTERPRISES
REP. BY ITS PROPRIETRIX MRS.PUSHPA
... RESPONDENT in WA No.1057 of 2016

W.A. 946 to 949 of 2016:- Writ Appeal filed under Clause 15 of the letter patent against the order of this court dated 20.4.2015 in W.P.Nos.11404 to 11407 of 2015.

W.P.No.11404 of 2015:-Writ Petitions filed under Article 226 of the Constitution of India praying to issue writ of certiorari call for the impugned proceedings of the respondent in TIN/33480061374/2011-2012, and quash the impugned order dated 13.2.2015 as passed contrary to the principles of natural justice and also contrary to the judgment of the Honourable Supreme Court in the case of the State of Maharashtra Vs Suresh Trading Company reported in 109 STC 439 and the Honourable Madras High Court in the case of M/s.Jinsasan Distributors Vs Commercial Tax Officer (CT) Chintaripet Asst Circle reported in 59 VST 256 in the case of M/s.Althaf Shoes (P) Ltd reported in 50 VST 179 in the case of M/s. Sri Vinayaga Agencies reported in 60 VST 283 in the case of Aassan Global Trade in W.P. Nos.25996 to 25998/2014 and also in the case of M. Infiniti wholesale limited in W.P.NO.9265 of 2013)

W.P.No.11405 of 2015:- Petitions filed under Article 226 of the Constitution of India praying to issue writ of certiorari To call for the impugned proceedings of the respondent in TIN/ 33480061374/2012-2013 and quash the impugned order dated 13.2.2015 as passed contrary to the

principles of natural justice and also contrary to the judgement of the Honourable Supreme Court in the case of the State of Maharashtra Vs Suresh Trading Company reported in 109 STC 439 and the Honourable Madras High Court in the case of M/s.Jinsasan Distributors Vs Commercial Tax Officer (CT) Chintaripet Asst Circle reported in 59 VST 256 in the case of M/s.Althaf Shoes (P) Ltd reported in 50 VST 179 in the case of M/s. Sri Vinayaga Agencies reported in 60 VST 283 in the case of Aassan Global Trade in W.P. Nos.25996 to 25998/2014 and also in the case of M. Infiniti wholesale limited in W.P.NO.9265 of 2013)

W.P.No.11406 of 2015:- Petitions filed under Article 226 of the Constitution of India praying to issue writ of certiorari to call for the impugned proceedings of the respondent in TIN/33480061374/2013-2014 and quash the impugned order dated 13.2.2015 as passed contrary to the principles of natural justice and also contrary to the judgement of the Honourable Supreme Court in the case of the State of Maharashtra Vs Suresh Trading Company reported in 109 STC 439 and the Honourable Madras High Court in the case of M/s.Jinsasan Distributors Vs Commercial Tax Officer (CT) Chintaripet Asst Circle reported in 59 VST 256 in the case of M/s.Althaf Shoes (P) Ltd reported in 50 VST 179 in the case of M/s. Sri Vinayaga Agencies reported in 60 VST 283 in the case of Aassan Global Trade in W.P. Nos.25996 to 25998/2014 and also in the case M. Infiniti wholesale limited in W.P.NO.9265 of 2013)

W.P.No.11407 of 2015:- Petitions filed under Article 226 of the Constitution of India praying to issue writ of certiorari call for the impugned proceedings of the respondent in TIN/33480061374/2014-2015 and quash the impugned order dated 13.2.2015 as passed contrary to the principles of natural justice and also contrary to the judgement of the Honourable Supreme Court in the case of the State of Maharashtra Vs Suresh Trading Company reported in 109 STC 439 and the Honourable Madras High Court in the case of M/s.Jinsasan Distributors Vs Commercial Tax Officer (CT) Chintaripet Asst Circle reported in 59 VST 256 in the case of M/s.Althaf Shoes (P) Ltd reported in 50 VST 179 in the case of M/s. Sri Vinayaga Agencies reported in 60 VST 283 in the case of Aassan Global Trade in W.P. Nos.25996 to 25998/2014 and also in the case M. Infiniti wholesale limited in W.P.NO.9265 of 2013

W.AP.1048 to 1057 of 2016, 2123/2013:- Writ appeal filed under clause 15 of the letter patent against the order of this court dated 22.11.2012 made in W.P.Nos.12305/12, 25013, 26800, 25225, 28739, 12306, 29010, 29011, 29012, 25014/12, 29929/11 respectively.

W.P.No.12305 of 2012:- Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari Calling for the records of the respondent in TIN/ 33350583063/ 2011-12 dated 3.4.2012 and quash the same as illegal and arbitrary.

W.P.No.25013 of 2012:- Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari Calling for the records of the Respondent in TIN/ 33810361359/2010-11 dated 21/08/2012 and quash the same as illegal and arbitrary

W.P.No.26800 of 2012:- Writ petition filed under Article 226 of the constitution of India praying to issue writ of prohibition prohibiting the respondent and its any other officer from proceeding further with the impugned Notice dated 2.5.2012 bearing reference TIN 33631342419/2010-11/A.S.C.VII against the petitioner

W.P.No.25225 of 2012:- Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari calling for the records of the respondent in TIN. No. 33582741332/11-12 dt 10.8.2012 quash the same

W.P.No.28739 of 2012:-Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari to call for the records of the respondent in TIN 33481560703/ 2011-12 dated 26.9.2012 and quash the impugned proceedings dated 26.9.2012 the same has been issued without authority of law and also against the provisions of the Tamil Nadu Value Added Act 2006

W.P.No.12306 of 2012:- Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari Calling for the records of the respondent in TIN/ 33350583063/ 2010-11 dated 3.4.2012 and quash the same as illegal and arbitrary

W.P.No.29010 of 2012:-Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari Calling for the records of the respondent in TIN No.33870583262/ 10-11 dated 24.8.2012 quash the same

W.P.No.29011 of 2012:-Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari

Calling for the records of the respondent in TIN No.33870583262/ 11-12 dated 18.9.2012 quash the same

W.P.No.29012 of 2012:Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari Calling for the records of the respondent in TIN No.33870583262/ 12-13 dated 18.9.2012 quash the same

W.P.No.25014 of 2012:Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari Calling for the records of the Respondent in TIN/ 33810361359/2011-12 dated 21/08/2012 and quash the same as illegal and arbitrary

W.P.No.29929 of 2011:Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari To call for the records of the respondent in TIN:33960501781/ 2010-11 dated 30/09/2011 and quash the same as illegal and arbitrary.

W.A.No.2259 to 2264 of 2013:- Writ appeals filed under clause 15 of letter patent against the order of this court dated 22.11.2012 made in W.P.Nos.24656 to 24661 of 2012:-

W.P.No.24656 of 2012: :Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari To call for the records of the respondent in TIN/ Year 33231603569/ 2006-2007 quash the impugned revised order of Assessment dated 21.5.2012 as arbitrary unreasonable and contrary to the provisions of the Tamil Nadu Value Added Tax Act 2006

सत्यमेव जयते

W.P.No.24657 of 2012: :Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari To call for the records of the respondent in TIN/ Year 33231603569/ 2007-2008 quash the impugned revised order of Assessment dated 21.5.2012 as arbitrary unreasonable and contrary to the provisions of the Tamil Nadu Value Added Tax Act 2006.

W.P.No.24658 of 2012:- Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari To call for the records of the respondent in TIN/ Year 33231603569/ 2008-2009 quash the impugned revised order of Assessment dated 30.5.2012 as arbitrary unreasonable and

contrary to the provisions of the Tamil Nadu Value Added Tax Act 2006

W.P.No.24659 of 2012:- :Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari records of the respondent in TIN/ Year 33231603569/ 2009-2010 quash the impugned revised order of Assessment dated 30.5.2012 as arbitrary unreasonable apart from being without jurisdiction since being and contrary to the provisions of the Tamil Nadu Value Added Tax Act 2006

W.P.No.24660 of 2012:-:Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari To call for the records of the respondent in TIN/ Year 33231603569/ 2010-2011 quash the impugned revised order of Assessment dated 30.5.2012 as arbitrary unreasonable and contrary to the provisions of the Tamil Nadu Value Added Tax Act 2006

W.P.No.24661 of 2012:- :Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari To call for the records of the respondent in TIN/ Year 33231603569/ 2011-2012 quash the impugned revised order of Assessment dated 30.5.2012 as arbitrary unreasonable and contrary to the provisions of the Tamil Nadu Value Added Tax Act 2006

W.A.NO.753 of 2016 Writ appeal filed under clause 15 of letter patent against the order of this court dated 3.3.2015 made in W.P.NO.5173 of 2015

W.P.No.5173 of 2015:- :Writ petition filed under Article 226 of the constitution of India praying to issue writ of certiorari Calling for the records relating to the proceedings of the respondent in Rc.No.221/ 2014/AC dated 12.1.2015 quash the same

For appellants : Mr.Kanmani Annamalai

in all appeals Additional Govt. Pleader

For respondents : Mr.Adhitya Reddy

(W.A.Nos.946 to 949 and
753 of 2016)

Mr.V.Sundareswaran

(W.A.Nos.2259 to 2264/2013)

Mr.P.R.Kumar

(W.A.Nos.1048, 1049, 1053

and 1057/2016)

Mr.C.Saravanan

(W.A.No.1050/2016)

Mr.S.Raveekumar

(W.A.Nos.1051, 1054 to

1056/2016)

No appearance in
W.A.1052/16

M/s. C. Rekhakumari
(W.A.2123/13)

COMMON JUDGMENT

(made by S.MANIKUMAR, J.)

Common issue in all the writ appeals filed by the Revenue is to the correctness of the orders passed by the writ court in setting aside the assessment orders passed by the competent authorities. As facts and law involved in all the writ appeals except W.A.No.753/2016, are common, they are being disposed of by this common judgment, and W.A.No.753/2016, is separately dealt with.

सत्यमेव जयते

2. In view of the above, suffice to incorporate the averments and grounds of challenge from one appeal. Respondents in all the appeals, except W.A.No.753/2016, are the buying dealers, who have purchased goods from the selling dealers, whose Registration Certificates, have been cancelled by the Commercial Tax Department with retrospective effect. Consequently, input tax credits availed by the buying dealers for the purchases made, during the period, when the Registration Certificates of the selling dealers were in force, were reversed, which resulted in filing of the writ petitions, by the assesseees for a writ of certiorari, to call for the proceedings of the Assessing Officers, contending inter alia that the said proceedings, are contrary to the principles of natural justice and the decision of the Hon'ble Apex Court in the case of State of Maharashtra vs. Suresh

Trading Co. reported in 109 STC 439, decisions of this court in M/s.Jinsasan Distributors vs. Commercial Tax Officer (CT), Chintadripet Assessment Circle reported in 59 VST 256, M/s.Althaf Shoes (P) Ltd reported in 50 VST 179, M/s.Sri Vinayaga Agencies reported in 60 VST 283, Aassan Global Trade in W.P.Nos.25996 to 25998 of 2014 and also in the case of M/s.Infiniti Wholesale Limited in W.P.No.9265 of 2013 respectively.

3. Before the writ court, contention has also been made that, so long as the purchasing dealers have complied with the requirements of Rule 10(2) of the Tamil Nadu Value Added Tax Rules (hereinafter referred to as VAT Rules), read with Section 19 of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as VAT Act), the claim of the purchasing dealers to avail input credit, should not be denied, and merely because, the Registration Certificates of the seller dealers, have been cancelled with retrospective effect, reversal of input tax credit of the buying dealers, is contrary to the law declared by the Hon'ble Apex Court in State of Maharashtra vs. Suresh Trading Co. reported in (1998) 109 STC 439 (SC) . Thus, for the abovesaid reasons, and other grounds inter alia, made in the supporting affidavits, respondents/buying dealers, have sought for a writ of certiorari, to quash the proceedings, impugned in the writ petitions.

4. Taking note of the law declared by the Hon'ble Apex Court in State of Maharashtra vs. Suresh Trading Co. reported in (1998) 109 STC 439 (SC) and a decision of this court in Jinsasan Distributors vs. Commercial Tax Officer, reported in 2013 59 VST 256 (Mad), the writ court, in W.P.Nos.11404 to 11407 of 2015 dated 20.04.2015, ordered as hereunder:

"2. Learned counsel appearing for the petitioner, drawing the attention of this court to the judgment of this court in JINSASAN DISTRIBUTORS v. CTO ((2013) 59 VST 256(MAD.)), pointed out that the issue raised in these writ petitions is covered in favour of the petitioner.

3. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who takes notice for the respondent, in reply, fairly conceding to the arguments advanced by the learned counsel for the petitioner, submitted that as against the order passed, writ appeal has been filed and the same is also pending without any order of stay.

4. In the decision reported in (2013) 59 VST 256(MAD.), it has been held as under:-

"8. The fact that the petitioners herein/assesseees under the TNVAT Act have purchased goods from registered dealers on paying the input tax is not in dispute. the fact that they have availed of input-tax credit in terms of section 19(1) of the TNVAT Act, 2006 is also not in dispute and in all these cases the assessment orders have been passed based on documents furnished. The cause of action for issuing the notices for reversal of input tax credit or the order revising the assessment is based on the cancellation of the registration certificates of the selling dealers, who sold the goods to the petitioners herein. It is also not in dispute that the registration certificates of the selling dealers have been cancelled with retrospective effect. That appears to be the one and only ground for initiating the action and therefore the challenge.

9. The question now to be considered is whether the cancellation of the registration certificates of the selling dealers with retrospective effect will entitle the Department to reverse the input-tax credit already availed of by the petitioners/assesseees consequent to assessment orders passed by competent authority based on records.....

An almost identical issue was considered by the Supreme Court in State of Maharashtra v. Suresh Trading Company (1998) 109 STC 439 (SC). ...

The Supreme Court, while dismissing the appeals filed by the Revenue, held as follows: (page 441 in 109 STC):

.....

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 registration certification when the registration was current. ...

In the present case, it is not in dispute that the registration certificates of the selling dealers have been cancelled with retrospective effect and, therefore, to reverse the input-tax credit on the plea that registration certificates

have been cancelled with retrospective effect cannot be countenanced."

5. In view of the above decision, the respondent cannot deny the benefit of input-tax credit to the petitioner as it is contrary to the law laid down by the Apex Court in the above said judgment. Therefore, the writ petitions stand allowed in the light of the ratio laid down by this court as well as the Honourable Supreme Court in the decision cited above. No costs. The connected miscellaneous petitions are closed.

5. W.A.Nos.946/2016 to 949/2016 are filed against the orders made in W.P.Nos.11404 to 11407 of 2015. Similar orders have been passed in other writ petitions, against which, appeals filed, are listed today.

6. Assailing the correctness of the orders impugned before us, Mr.Kanmani Annamalai, learned Additional Government Pleader (Taxes), explained that Tamil Nadu Value Added Tax, 2006 and the Rules framed thereunder, provide for a comprehensive system, both for collection of tax and curbing tax evasion. Inviting attention of this court to Section 19 (16) of Act, 2006, he submitted that the input credit availed by a registered dealer shall be only provisional and the Assessing Authority is empowered to revoke the same, if it appears to the Assessing Authority to be incorrect, incomplete or otherwise not in order. He further submitted that Section 19(16) of the Act has to be read along with Section 19(15) of the Act, 2006, which states, where a registered dealer has purchased any taxable goods from another dealer and has availed input tax credit in respect of the said goods and if the registration certificate of the selling dealer is cancelled by the appropriate registering authority, such registered dealer, who has availed by way of input tax credit, shall pay the amount availed on the date from which the order of cancellation of the registration certificate takes effect. Such dealer shall be liable to pay, in addition to the amount due, interest at the rate of two percent, per month, on the amount of tax so payable, for the period commencing from the date of claim of input tax credit by the dealer to the date of its payment.

7. On the powers of the competent authority to revoke the certificate of registration, attention was invited to Sections 39(14) and 39(15) of the Act, which reads thus:

Sec.39(14). The authority granting the certificate of registration may, by order, for good sufficient reasons to cancel, modify or amend the certificate of registration granted by it.

Sec. 39(15). No application for registration or for a copy or duplicate of the certificate under this section shall be refused and no order under sub-section 14 shall be made, unless the dealer concerned has been given an opportunity of being heard.

8. Inviting attention of this court to Section 17 of the VAT Act, 2006, learned Additional Government Pleader (Taxes) submitted that, for the purpose of assessment of tax under the Act, the burden of proving that any transaction or any turnover of a dealer is not liable to tax, shall lie on such dealer. In this context, Section 17 of the Act is extracted hereunder:

Section 17. Burden of proof. - (1) For the purpose of assessment of tax under this Act, the burden of proving that any transaction or any turnover of a dealer is not liable to tax, shall lie on such dealer.

Sec. 17(2) For the purpose of claim of input tax credit, the burden of proving such claim shall lie on such dealer.

Sec.17(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, a dealer in any of the goods specified in the Second Schedule liable to pay the tax in respect of the first sale in the State shall be the first seller of such goods and shall be liable to pay tax at the rate specified in the Second Schedule on his turnover of sale relating to such goods, unless he proves that the sale or purchase, as the case may be, of such goods had already been subjected to tax under this Act.

9. In the backdrop of the above provisions, Mr.Kanmani Annamalai, learned Additional Government Pleader (Taxes) submitted that the authority granting certificate of registration, has powers to cancel, modify or amend any certificate of registration by him, and while doing so, he is mandated to give the dealer concerned, an opportunity of being heard. He also submitted that when input tax credit availed by the registered buying dealers is only provisional, the assessing authority is empowered to revoke the same, which in the case on hand, has been done. He further submitted that consequent to the cancellation of the Registration Certificates of the selling dealers with retrospective effect, reversal of input credits availed by the dealers has been made in terms of Section 19(15) of the VAT Act, which cannot be said as erroneous.

10. He further submitted that assessment orders are passed, based on the documents furnished by the registered dealers. According to him, the competent authorities have acted, as per the statutory provisions, in the best interest of Revenue and accordingly, reversed the input credits availed by the dealers, which action, cannot be termed as illegal, warranting interference.

11. Per contra, learned counsel for the respondents in W.A.Nos.1051/2016 submitted that in Bombay Sales Tax Act, 1951, there is a provision for retrospective cancellation of Registration Certificate. The Selling dealer's Registration Certificate was cancelled retrospectively. Assessee's claim for deduction on the basis of purchase made at the time when the sellers Registration Certificate was alive, was disallowed. Although there is power to cancel the certificate of registration retrospectively, the Apex Court in State of Maharatshttra vs. Suresh Trading Co. reported in (1998) 109 STC 439 (SC) held that as long as the buyers have purchased the goods, when the Registration Certificates were in force, disallowance by the Assessing Officer has been held, as bad in law. He also relied on a judgment of the Kerala High Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam vs. Debi Prasad Shyam Sunder & Sons reported in 82 STC 305.

Heard the learned Additional Government Pleader (Taxes) and perused the material available on record.

12. In the light of the statutory provisions extracted supra, there cannot be any quarrel that input tax credit availed by any registered dealer is only provisional and that the Assessing Officers are empowered to revoke the same, if it appears to the assessing authority to be incorrect, incomplete or otherwise not in order. If Section 19(15) of the VAT Act, 2006, to be given effect, in letter and spirit, then, no sooner the Registration Certificate of the selling dealer is cancelled by the appropriate authority, such registered dealer, who had purchased any taxable goods from the selling dealer and availed input tax credit in respect of the said goods, has to pay the amount availed on the date from which the order of cancellation of the Registration Certificate takes effect. Added further, the buying dealer is also liable to pay, any addition to the amount due, interest at the rate of two percent per month on the amount of tax payable, for the period commencing from the date of claim of input tax from the dealer. Section 39(15) of the VAT Act, 2006, is silent, as to whether the competent authority is empowered to cancel, modify or amend any certificate of registration granted by him, retrospectively.

13. As the issue considered by this court, in the instant writ appeals, is restricted only to the correctness of reversal of input credits availed, by the buying dealers, consequent to the cancellation of the Registration Certificates of the selling dealers with retrospective effect, we are not inclined to go into the aspect, as to whether the competent authority has power to cancel, modify or amend the Registration Certificate retrospectively.

14. In the light of the above, we now consider the decision of the Hon'ble Supreme Court in State of Maharashtra vs. Suresh Trading Co. reported in (1998) 109 STC 439, relied on by the writ court. In the above reported case, respondents therein were registered dealers, under the Bombay Sales Tax Act, 1951. During the period of 1st January 1967 to 31st December 1967, they have purchased goods from M/s.Sulekha Enterprises, who were also registered dealers under the said Act. Bills given to the respondents contained a certificate to the effect that the registration of Sulekha Enterprises was in force, on the date of sales. Respondent/buying dealers, thereafter, resold the goods purchased by them from Sulekha Enterprises, within the State of Maharashtra. Purchasing dealers also claimed to deduct, from their turn over of sales, for the relevant accounting years, the re-sale of the goods purchased from Sulekha Enterprises. The Sales Tax Officer disallowed the respondent's claim for deduction, on the ground that the registration of Sulekha Enterprises had been cancelled on 20.08.1967, with effect from 01.01.1967. The Department contended that on the dates of purchase, Sulekha Enterprises was not a registered dealer. The Sales Tax Officer also imposed penalty upon the purchasing dealers/respondents. Being aggrieved, they filed an appeal to the Commissioner of Sales Tax, which was dismissed. Further appeal to the Maharashtra Sales Tax Tribunal, resulted in confirmation on disallowance, but the Tribunal ordered deletion of penalty.

15. Being aggrieved, respondent/buying dealer, moved the High Court, for an answer, as to, "whether, on the facts and in the circumstances of the said case, the Tribunal was correct in holding that the Sales Tax Authority was justified, in treating the purchase of the applicants made from Sulekha Enterprises, as purchasers from an unregistered dealer, on the ground that the Registration Certificate of Sulekha Enterprises was cancelled on August 25, 1967, and when the cancellation thereof, was operative with effect from January, 1967, insofar as the purchase of the applicants, effected from the said party, prior to August 25, 1967 were concerned?"

16. The High Court answered the question in favour of the respondent/buying dealer. The High Court noted that the effect of disallowing deductions claimed by the respondent was in subsistence, to tax transactions, which were otherwise not taxable. High Court further held that the condition precedent for becoming entitled to make a tax free re-sale was the purchaser of the goods, which was re-sold from a registered dealer and obtaining from that registered dealer of a certificate in this behalf. Thus the condition having been fulfilled, the right of purchasing dealer to make a tax free sale accrued to him. Thereafter, the whole, by reason of something that had happened subsequent to the date of the purchaser, namely, the consummation of the selling dealers registration with retrospective effect, that a tax free re-sales had become liable to tax.

17. Not satisfied with the aforesaid decision of the High Court, State of Maharashtra went on appeal. After hearing the learned counsel appearing for the parties, the Hon'ble Apex Court in Suresh Trading Company's case, at paragraphs 5 and 6, held as follows:

"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 out 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.

6. It must also be noted that the learned Advocate General, appearing for the department before the High Court, stated that the genuineness of the transactions between the registered dealer and the respondents was not in doubt and not disputed. This being so, it is difficult to see how there could have been a cancellation of registration with effect from a date that preceded the dates of the transactions and how, accordingly, the respondents could be made liable to pay tax."

18. Thus, the Hon'ble Apex Court, dismissed the appeal preferred by State of Maharashtra holding that, whatever be the effect of 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 such certificate was alive.

19. In Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam vs. Debi Prasad Shyam Sunder & Sons reported in 82 STC 305, the Hon'ble Division Bench of the Kerala High Court, has held as follows:

"6. Admittedly, in this case, the purchasing dealers were having registration under the Kerala General Sales Tax Act, 1963, when the disputed transactions were effected; the subsequent cancellation of their registration, even if stated to be with retrospective effect, cannot in any manner visit the assessee with adverse consequences. The assessee is entitled to the exemption pleaded, on the basis of form 25 declarations, issued by the purchasing dealers, who had admittedly valid certificates, on the day when the declarations were issued."

20. We have already considered, what the Hon'ble Apex Court in Suresh Trading Company's case, has held. Revenue has not placed any contrary judgments, nor pleaded that the judgements, stated supra, are inappropriate to the facts on hand. In the light of the above, all the writ appeals dealing with reversal of input credit, are dismissed. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petitions are closed.

21. Writ appeal No.753 of 2016 is filed against the order made by the writ court in W.P.No.5173 of 2015 dated 03.03.2015, by which the writ court, issued a writ of certiorari, to quash the order of the Assistant Commissioner (CT), Braodway Assessment Circle, Chennai, respondent herein in Rc.No/221/2014/Ac dated 12.01.2015.

22. Order impugned before the writ court was cancellation of the Registration Certificate of M/s.Vijayshree Metals, Chennai/respondent, with retrospective effect. Placing reliance on the decision of this court in Jinsasan Distributors vs. Commercial Tax Officer (CT), Chintadripet Assessment Circle, Chennai, reported in 2013 59 VST 256 (Mad) and by observing that the said decision is squarely applicable to the facts to W.A.No.753/2016, the writ court, has set aside

the order dated 12.01.2015 of the Assessing Officer, cancelling the Registration Certificate of the seller, with retrospective effect, with a further direction to the Assessing Officer, to activate the Registration Certificate, within one week from the date of receipt of a copy of the above said order.

23. Being aggrieved, the Assistant Commissioner (CT), Broadway Assessment Circle, Chennai has filed the present appeal W.A.No.753 of 2016.

24. Though the appellant has raised several grounds assailing the correctness of the order made in W.P.No.5173 of 2015 dated 03.03.2015, going through the same, and with due respect to the writ court, we are of the view that the decision rendered in a case pertains to the challenge against reversal of input credit and that, judgment has been applied, to set aside the retrospective cancellation of the Registration Certificate. From the perusal of the order, it would also be deduced that the appellant, was not provided with an opportunity to file any counter affidavit, on the grounds of challenge made in the supporting affidavit to the writ petition filed to quash the Registration Certificate, with retrospective effect.

25. In the above circumstances, we are of the view that order made in W.P.No.5173 of 2015 dated 03.03.2015 requires interference. Mr.Kanmani Annamalai, learned Additional Government Pleader (Taxes) for the appellant submitted that a counter affidavit would be filed to the challenge. Mr.Adhitya Reddy, learned counsel for the respondent, has no objection for the impugned order before this court, being set aside, giving liberty to the department to file counter affidavit. He has also no objection for remanding the matter to the writ court. Submission is placed on record. In view of the above, order made in the writ petition is set aside. Writ court is requested to consider the same and decide accordingly. No cost. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. THE ASSISTANT COMMISSIONER (CT)
BROADWAY ASSESSMENT CIRCLE CHENNAI.1

2. THE ASSISTANT COMMISSIONER (CT)
CHOO LAI ASSESSMENT CIRCLE CHENNAI.

3. THE ASSISTANT COMMISSIONER CT
CHENGALPATTU ASSESSMENT CIRCLE NO.2A GST ROAD
CHENGALPATTU

4. THE ASSISTANT COMMISSIONER
(CT) BROADWAY ASSESSMENT CIRCLE CHENNAI.

5. THE COMMERCIAL TAX OFFICER
CHINTADRI PET ASSESSMENT CIRCLE NO. 62
CATHEDRAL ROAD CHENNAI 600 086.

6. THE ASSISTANT COMMISSIONER
(CT) MOORE MARKET (SOUTH) ASSESSMENT CIRCLE
151 NSC BOSE ROAD WAVOO COMPLEX CHENNAI 1.

7. THE ASSISTANT COMMISSIONER (CT)
KOYAMBEDU ASSESSMENT CIRCLE CHENNAI-107

8. THE COMMERCIAL TAX OFFICER
SHEVAPET NORTH CIRCLE CHINNERI VAYALKADU
MEYANUR ROAD SALEM.

9. THE COMMERCIAL TAX OFFICER
T. NAGAR (EAST) ASSESSMENT CIRCLE
GREENWAYS ROAD CHENNAI 600 028

10. THE COMMERCIAL TAX OFFICER
CHINTADRI PET ASSESSMENT CIRCLE CHENNAI

Copy to

The Section Officer

Writ Section,

High Court, Madras

(For posting W.P.No.5173 of 2015 before the concerned court)

1 cc to C. Rekhakumari, Advocate Sr. 50058

+1 cc to Mr./Ms. V. SUNDARESWARAN, Advocate, SR.No.50060

1 cc to Mr./Ms. P.R. KUMAR, Advocate, SR.No.49738
+1 cc to Mr./Ms. P.R. KUMAR, Advocate, SR.No.49739
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W.A.No.946 of 2016 (Batch)

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