

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.06.2016
Coram

The Hon'ble Mr. Justice T.S. Sivagnanam

Writ Petition Nos. 305 to 308 of 2016
and
W.M.P. Nos. 194 to 201 of 2016

M/s. The Computer Consultants,
rep. by its Partner, Mr. S. Rajesh Kannan
No. 6-G, Tank Street,
Hosur - 635 109. ...Petitioner in all W.Ps.

Vs.

1. The Assistant Commissioner (CT)
Hosur (South) Assessment Circle,
Hosur.
2. The Branch Manager,
Canara Bank Ltd.,
Hosur. ...Respondents in all W.Ps.

Prayer in W.P. No. 305 of 2016

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the first respondent in TIN : 33653362045/2010-11, dated 28.09.2015, and consequential proceedings in TIN : 33653362045/2010-11, dated nil, signed on 28.09.2015, and to quash the same as ultravires under the provisions of Tamil Nadu Value Added Tax Act, 2006.

Prayer in W.P. No. 306 of 2016

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the first respondent in TIN : 33653362045/2011-12, dated 28.09.2015, and consequential proceedings in TIN : 33653362045/2011-12, dated nil, signed on 28.09.2015, and to quash the same as ultravires under the provisions of Tamil Nadu Value Added Tax Act, 2006.

Prayer in W.P. No. 307 of 2016

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records

of the first respondent in TIN : 33653362045/2012-13, dated 28.09.2015, and consequential proceedings in TIN : 33653362045/2012-13, dated nil, signed on 28.09.2015, and to quash the same as ultravires under the provisions of Tamil Nadu Value Added Tax Act, 2006. '

Prayer in W.P.No.308 of 2016

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records of the first respondent in TIN : 33653362045/2013-14, dated 28.09.2015, and consequential proceedings in TIN : 33653362045/2013-14, dated nil, signed on 28.09.2015, and to quash the same as ultravires under the provisions of Tamil Nadu Value Added Tax Act, 2006.

In all W.Ps.

For Petitioner : Mr.V.Sundareeswaran

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON O R D E R

Since the issue involved in these Writ Petition and the parties are one and the same, these Writ Petitions have been taken up together and disposed of by this common order.

2. Heard Mr.V.Sundareeswaran, the learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, the learned Additional Government Pleader for respondents.

3. The petitioner is a registered dealer, under the erstwhile provisions of Tamil Nadu General Sales Tax Act, 1959 (TNGST Act), and at present, under the provisions of Tamil Nadu Value Added Tax, 2006. The challenge in these Writ Petitions is to the proceedings of the Assessing Officer, dated 28.09.2015, in and by which, the Input Tax Credit (ITC) availed by the petitioner, has been reversed, on the ground that, it is in excess of what the petitioner is entitled to avail.

4. The petitioner was served with a notice, dated 12.08.2015, stating that, on cross verification of the monthly returns for all the four years, viz., 2010-11, 2011-12, 2012-13 and 2013-14 from the Department's website, it is found that the petitioner had reported higher purchases and availed ITC in excess. For the above reasons, the returns filed by the petitioner for the relevant years, were rejected as incorrect, and the ITC, which was availed by the petitioner, was proposed

to be reversed. Apart from that, the petitioner was granted 15 days for submission of their objection. On receipt of the show cause notice for all the four years, the petitioner appeared in person before the Assessing Officer, and explained that they have claimed ITC on the basis of purchased bills, and requested the Officer to verify the Annexure II of the sellers and to drop proceedings. The respondent, however, did not accept the explanation given by the petitioner, and passed the impugned orders.

5. Learned counsel appearing for the petitioner would submit that the ITC could not have been reversed based on website reports, and this has been held to be illegal, in several decisions. To buttress the said contention, reliance was placed on the decision of the Hon'ble Division Bench of Delhi High Court in the case of (Shanti Kiran India Pvt. Ltd., Vs. Commissioner Trade and Tax Dept.) (2013) 57 VST 405, and decisions of this Court in i) (Althaf Shoes (P) Ltd., v. Assistant Commissioner (CT), Chennai, [(2012) 50 VST 179 (Mad)] and ii) (Infiniti Wholesale Limited Vs. Assistant Commissioner (CT) Koyambedu) [(2015) 82 VST 457 Madras].

6. Heard the learned Additional Government Pleader for respondents on the above submissions.

7. The ratio deducible from the decisions referred to above are that, ITC shall not be disallowed for the reasons that the seller had not been assessed, since the selling dealer has not filed returns. In fact, the decision of the Delhi High Court was after amendment of the Act, yet, it was held that ITC shall not be disallowed for the earlier period, i.e., prior to the amendment. In the case of Infiniti Wholesale Ltd.,, referred above, this Court took into consideration the decision in the case of Althaf Shoes, referred above, and other decisions and held 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 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.

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.

8. The above referred decision, squarely would apply to the facts of the present cases, and consequently, it has to be held that the impugned orders are not tenable. Accordingly, the Writ Petitions are allowed, impugned orders are quashed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner (CT)
Hosur (South) Assessment Circle,
Hosur.
2. The Branch Manager,
Canara Bank Ltd.,
Hosur.

+1cc to the Special Government Pleader Sr.29566

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