IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.32383 of 2016

and

W.M.P.No.28090 of 2016

Tvl.Sri Murugan Textile Traders,
Represented by its Proprietor, P.Durairaj,
No.4/26-C, Goundenpudur,
Kuttipalayam (P.O.) Jambai (Via),
Bhavani (TK) 638 312,Erode District. ..Petitioner

/vs/

The Assistant Commissioner (CT),
Bhavani Assessment Circle,
Bhavani, Erode District. ..Respondent

Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records on the files of the respondent in TIN.33622943167/2012-13 dated 8.8.2016 and quash the same as being without jurisdiction and authority of law and contrary to the direction issued by this Hon'ble Court in W.P.No.22060/2016 and WMP.No.18852/2016 dated 28.6.2016.

For Petitioner :Mr.R.Senniappan
For Respondent :Mr.S.Kanmani Annamalai, AGP

ORDER

Heard Mr.R.Senniappan, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent. By consent on either side, this writ petition is taken up for disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provision of Tamil Nadu Value Added Tax Act, 2006.

3. The legal issue involved in this writ petition is, whether input credit tax could have been referred to on the allegations set out in the impugned order/notice, dated 08.08.2016 and the same has been culled out from the details furnished by the other end dealer, in their annexures filed along with the returns.

4. The learned counsel appearing for the petitioner submitted that an identical issue was considered by this Court in a case of Tvl.Thribovan Enterprises Pvt. Ltd., rep by its Director vs. Assistant Commissioner, (CT)(FAC), Ranipet, SIPCOT, Assessment Circle, Ranipet(SIPCOT), W.P.Nos.24260 and 24261 of 2016, dated 14.07.2016 and the said case, it was held as follows:-

> "The legal issue as to whether ITC could have been reversed on the allegation made in the notice, dated 14.08.2015, is no longer res integra and had been considered by this Court in the cases of Althaf Shoes (P) Ltd., vs. Assistant Commissioner (CT), Valluvarkottam, Assessment Circle, Chennai, reported in (2012) 50 VST 179 (Mad); Sri Vinayaga Agencies vs. Assistant Commissioner (CT), Vadapalani-1, Assessment Circle, Chennai, reported in (2013) 60 VST 283 (Mad), which had been followed in the case of Infinity Wholesale Ltd., vs. Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai-1, reported in (2015) 82 VST 457 (Mad). At this stage, it would be worthwhile to refer to the operative portion of the order:-
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> > 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 assessses

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.

In the light of the above discussion and placing reliance on the above referred decisions, the impugned orders are held to be unsustainable. Accordingly, the writ petitions are allowed and the impugned assessment orders are quashed. No costs. Consequently, connected Miscellaneous Petitions are closed."

4. The learned Additional Government Pleader appearing for the respondent does not dispute the fact that in the decision referred to supra, the issue involved is identical to the above requirements.

5. Thus, by applying the decision referred to above, the impugned order is liable to be quashed and accordingly, the same is quashed and the writ petition is allowed. No costs. Consequently Connected WMP.No.28090 of 2016 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
The Assistant Commissioner (CT),
Bhavani Assessment Circle,
Bhavani, Erode District.

+ one cc to Mr.R.Senniappan, Advocate vide SR.No.58253.
+ Two cc to Special Government Pleader (Taxes) vide SR.No.52707,58147.

W.P.No.32383 of 2016
and
W.M.P.No.28090 of 2016

gj(co)
yj(12/11/2016)