IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.32456/2016 & WMP.Nos.28152 & 28153/2016

M/s.Premium Exports
rep.by its Proprietor, A.Aslam Basha
19-245/B/30, Sasyed Shafi Street
Basheerbad, Muslimpur
Vaniyambadi, Vellore District. .. Petitioner

..Vs..

The Commercial Tax Officer
Vaniyambadi Assessment Circle
Vaniyambadi, Vellore District. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records of the respondent in his proceedings in TIN No.33834644092/2014-2015 dated 29.03.2016 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.K.Venkatesh
Government Advocate [Taxes]

ORDER

Heard Mr.S.Ramanathan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate [Taxes] accepting notice on behalf of the respondent. By consent, the Writ Petition itself is taken up for final disposal.

2 The petitioner, in this writ petition, challenges the impugned Assessment order dated 29.03.2016 for the Assessment Year 2014-2015 under the provisions of the Tamil Nadu Value Added Tax Act, 2006. Pursuant to the verification made in

the Intranet Website of the Department, the respondent issued a notice to the petitioner dated 29.02.2016, stating that they have effected purchases from the Registration Cancelled Dealers and the names of three dealers were mentioned, viz., M/s.S.N.Leathers ; M/s.Mashu International ; and M/s.Fahad Trading Company and on receipt of the notice, the petitioner submitted their objections pointing out that all the three dealers have filed their E-Returns and copies of the E-Returns have been furnished to the respondent. The respondent, on receipt of the objections, appears to have not given any opportunity of personal hearing to the petitioner ; but completed the assessment and confirmed the proposal by stating tht the registration certificate has been cancelled with retrospective effect. If that is the case, obviously those dealers could not have filed their E-Returns. Therefore, without conducting proper enquiry, the respondent should not have confirmed the proposal in the notice. Above all, in the light of the decision of this Court reported in 59 VST Page 256 [Jin-Sasan Distributor Vs CTO, Chinthathripet Assessment Circle], the retrospective cancellation of the registration certificate issued to the Selling Dealer could not have an effect on the right of the petitioner who have paid the tax on the basis of the invoices and thereafter, claimed the benefit u/s.19 of the TNVAT Act. Therefore, it was held that to deny ITC to the petitioner therein, viz., the purchasing dealer on the ground that the registration certificates of the Selling Dealers has been cancelled with retrospective effect, is illegal and it was set aside.

3 Therefore, by accepting the factual information given by the regarding the returns filed by the Selling Dealers by way of E-Filing and applying the decision of this Court in Jin-Sasan's case [cited supra], the impugned order is held to unsustainable.

4 Accordingly, the writ petition is allowed and the impugned order of assessment dated 29.03.2016 in TIN.No.33834644092/2014-15 is set aside. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Vaniyambadi Assessment Circle,
Vaniyambadi, Vellore District.

+1cc to M/S.S.Ramanathan, Advocate Sr.52441
+1cc to the Special Government Pleader Sr.52705

W.P.No.32456/2016

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srg 29/09/2016