IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.9.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.33880 of 2016
&
WMP.No.29211 of 2016

M/s.Padmavathy Realty and Promoters
Pvt. Ltd., rep.by its Manager ... Petitioner

Vs

1. The Assistant Commissioner (CT),
Kotturpuram Assessment Circle,
Greanways Road, Chennai-28.

2. M/s.New Smart Enterprises,
Kakkalur, Tiruvallur District. ... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the first respondent herein culminating in the order bearing TIN : 33370863964/2013/14/ST 7571516AA03 dated 3.6.2016 and quash the same.

For Petitioner : Mr.M.Vaidyanathan

For Respondent-1 : Mr.S.Kanmani Annamalai,
Additional Government Pleader

ORDER

Heard Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the first respondent. Heard both. In view of the nature of relief this Court proposes to grant, the writ petition itself is taken up for final disposal without ordering notice to the second respondent.

2. The petitioner is engaged in the construction of apartments, residential accommodations and commercial buildings and registered as a dealer on the file of the first respondent. The first respondent issued a notice to the petitioner dated

10.9.2015 stating that on verification of the data available, it is seen that the dealer purchased goods from the second respondent. In the said notice, it was also stated that though the petitioner had filed annual returns, the selling dealer has not been taxed as per the provisions of the Tamiln Nadu Value Added Tax Act, 2006. Therefore, the first respondent proposed to reverse the input tax credit availed by the petitioner. Further, the petitioner was granted 15 days' time to submit their reply.

3. The petitioner, by representation dated 7.10.2015, informed the first respondent that they had addressed a letter to the second respondent with a request to send a copy of VAT Annexure II for July 2013 along with tax payment details and agreed to submit the same before the first respondent as soon as they received the same. The copy of the letter sent to the second respondent was also enclosed along with the reply to the first respondent.

4. On receipt of the same, the first respondent issued another notice dated 27.10.2015 stating that though 10 days' time had lapsed, the petitioner had not filed their objections and therefore, it was proposed to assess the dealer as per the first notice dated 10.9.2015. The petitioner was further informed that if they required an opportunity of personal hearing, the same would be provided on any working day at 11 AM in the office of the first respondent.

5. Pursuant thereto, the petitioner submitted another reply on 10.11.2015 stating that since they are registered dealers on the file of the first respondent and are paying tax along with monthly returns regularly, that they purchased aluminium shutters from the second respondent and paid tax at Rs.81,951/- at 14.5% and that they have paid the entire amount to the selling dealer and filed monthly returns within the due date, the proposal may be dropped. The petitioner further stated that at the time of filing self assessment return under Section 22(2) of the said Act, they followed the procedure under Rule 10(2) of the Tamil Nadu Value Added Tax Rules 2007 and that therefore, it cannot be stated that they wrongly availed the input tax credit.

6. Referring to Section 19(2) of the said Act, it was stated that the input tax credit can be claimed by the 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 self assessment was made. In this regard, reliance was placed on the decision of this Court in the case of Sri Vinayaga Agencies Vs. Assistant Commissioner, Vadapalani [reported in (2013) 60 VST 283 (Madras)]. Therefore, the petitioner contended that the input tax credit availed by them

cannot be reversed and that the petitioner cannot be held responsible for non payment of tax to the Department by the selling dealer.

7. This objection has been received by the first respondent, after which, another notice was issued dated 23.5.2016, once again setting out the same proposal and proposing to reverse the input tax credit to the tune of Rs.81,951/-. On receipt of the same, the petitioner sent a reply on 1.6.2016 reiterating the stand taken in their earlier reply dated 10.11.2015 and enclosing a copy thereof and requested to drop further action. After receipt of the said letter, the first respondent passed the impugned order.

8. On perusal of the impugned order, it is seen that the first respondent extracted the entire reply given by the petitioner, but confirmed the proposal stating the same reason namely that the selling dealer has not paid tax and that the petitioner has not produced relevant documents. In terms of the decision of this Court in (2013) 60 VST 283 (cited supra), the burden is on the purchasing dealer to show that he has purchased the goods and remitted tax. This having not been disputed by the first respondent, the question of reversal of input tax credit solely on the ground that the selling dealer has not paid tax does not arise.

9. That apart, the first respondent has not discussed as regards the applicability of the said decision of this Court, on which, the petitioner placed reliance even at the time when they submitted their reply dated 10.11.2015. Further, the petitioner has also produced proof to show that they remitted tax and this has not been disputed by the first respondent. The copy of the bank statement has also been enclosed in the typed set of papers. It also reflects the transaction and payments effected by the petitioner through bank. Thus, in the considered view of this Court, the petitioner has discharged the burden cast on them and they are entitled to avail input tax credit.

10. For the aforesaid reasons, the writ petition is allowed and the impugned order is set aside. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Kotturpuram Assessment Circle,
Greanways Road, Chennai-28.

+1cc to Mr.M.Vaidyanathan, Advocate, S.R.No.55020
+1cc to the Special Government Pleader(T), S.R.No.55072

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&
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CTK(CO)
CA(05/10/2016)