

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.34772 to 34779 of 2016  
& WMP.Nos.29949 to 29956 of 2016

Tvl.Metalica Metals, rep.by its  
Partner Mr.Kailash Bhandari .... Petitioner all the WPs

Vs

1. The Commissioner of Commercial  
Taxes Department, Chepauk,  
Chennai-5.
2. The Commercial Tax Officer,  
Harbour Assessment Circle,  
Chennai. .... Respondents in all the WPs

PETITIONS under Article 226 of The Constitution of India  
praying for the issuance of Writs of Certiorari to call for the  
records of the second respondent respectively in TIN  
No.33190021230/2007-08, TIN No. 33190021230/2008-09, TIN  
No.33190021230/2009-10, TIN No. 33190021230/2010-11, TIN  
No.33190021230/2011-12, TIN No. 33190021230/2012-13, TIN  
No.33190021230/2013-14 and TIN No. 33190021230/2014-15 dated  
24.8.2016 and quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondents : Mr.K.Venkatesh,  
Government Advocate

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COMMON ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice  
for the respondents. Heard both. By consent, the writ petitions  
are taken up for joint disposal.

2. The petitioner is a registered dealer on the file of the  
second respondent under the provisions of the Tamil Nadu Value  
Added Tax Act, 2006 (hereinafter called the TNVAT Act) and the

Central Sales Tax Act, 1956, in ferrous and non ferrous metals and mainly in stainless steel. In these writ petitions, the petitioner has challenged the orders of assessment under the TNVAT Act for the assessment years from 2007-08 to 2014-15.

3. A VAT audit was conducted in the place of business of the petitioner by the officials of the Enforcement Wing on 10.12.2014, in which, certain defects were noticed and based upon a report submitted by the officials of the Enforcement Wing, the second respondent issued pre-revision notices dated 12.1.2016 for all the assessment years. In all the notices, three issues were pointed out namely

- (i) tax due on sale difference
- (ii) input tax credit reversal for non production of documents under Section 19 (13) of the TNVAT Act and
- (iii) cross verification.

4. As regards the first issue, the petitioner admitted the proposal and paid the tax due and hence, there is no quarrel or dispute on the said issue.

5. Similarly, with regard to the third issue, the petitioner, while submitting their objections to the pre-revision notices, furnished details of the other end dealers, who had filed returns and paid taxes and found the information to be correct and the second respondent was satisfied that there is no discrepancy on their purchases. Hence, the proposal under the third issue was dropped.

6. Thus, for all the assessment years, the only issue, which arises for consideration is with regard to the reversal of input tax credit for non production of documents under Section 19(13) of the TNVAT Act.

7. In the pre-revision notices, the respondent stated that the petitioner has not produced reasonable transport voucher for their local purchases to establish their physical occurrence of transaction and that their contention of local arrangement on the transportation was not acceptable while comparing with their purchase volume. It was further stated in the pre-revision notices that the concerned purchases were subject to verification of genuineness and that in the absence of clarity, it was proposed to reverse the input tax credit on the concerned purchase, the details of which were mentioned in the pre-revision notices.

8. The petitioner, vide objections dated 22.1.2016, which is common for all the assessment years, submitted that the entire

purchases are covered by the original tax invoice as contemplated under Section 19(10)(a) of the TNVAT Act, that the same were duly reflected in the accounts and reported in the monthly returns and that no omission of purchases was found at the time of VAT audit. The petitioner further stated that in the absence of any such discrepancy, the proposal to reverse the input tax credit on the basis of an alleged verification, is against the principles of natural justice and fair play. Without prejudice to such a contention, the petitioner requested the second respondent to furnish the details of purchases such as bill numbers, date, name, month, on which, the claim of input tax credit is sought to be reversed to enable them to reconcile and get clarification and confirmation from their sellers.

9. With regard to the proposal to reverse the claim of input tax credit on the purchase turnover, based on the alleged cross verification of the other end dealers, as per Annexure II of their monthly return that they have not reported the purchases shown in Annexure I of their monthly return, it was stated that during the course of VAT audit, all purchases were found to be genuine and no suppression or omission of any purchase was found. The petitioner again made a request to furnish the break up of the purchase turnover and details, so as to enable them to get clarification from their sellers.

10. In respect of the allegation that the petitioner had effected purchases from registration cancelled dealers, it was submitted by the petitioner that they effected purchases from various registered dealers and the same are covered by original tax invoices and they were duly reflected in their account. Further, for the sales made, the sellers had charged VAT as applicable in their sale bills and the same were paid to the petitioner through bank and based on these purchases, they are entitled to claim input tax credit in terms of Section 19(1) of the TNVAT Act.

11. In support of their contention, the petitioner placed reliance on the decisions of this Court in the case of Jinsason Distributors Vs. CTO [reported in (2013) 59 VST 256] and Sri Vinayaga Agencies Vs. Asst. Commissioner (CT) [reported in (2013) 60 VST 283] and also other decisions on the said point. Without prejudice to such submissions, they requested for furnishing of break up details.

12. It appears that after receipt of the petitioner's objections, the second respondent furnished the details. With regard to the movement of goods, the petitioner had furnished documents along with their common reply dated 25.3.2016. The stand that the petitioner effected purchases from registration

cancelled dealers was denied and supportive documents were placed for consideration before the second respondent.

13. While completing the assessments and passing the impugned orders, the second respondent stated that the contention of the petitioner is not acceptable for the reason that the input tax credit is allowable only to the extent of tax remitted to the Government at the other end, otherwise the input tax credit will not be allowed. It was further observed that the documents produced by the petitioner do not establish that the tax is remitted or not at the point of sales. Those objections were overruled by stating that in the absence of clarity, their contention is not sustainable.

14. After elaborately hearing the parties and carefully perusing the materials on record, it is to be pointed that the manner, in which, the second respondent has completed the assessment under the said head is unsustainable. It is an admitted fact that the petitioner requested for details and certain details were furnished by the second respondent, for which, the petitioner submitted their objections. In fact, while deciding the third issue regarding cross verification, the returns filed by the vendors were verified and the second respondent was satisfied that the transaction done by the petitioner was with registration active dealers and that they had paid tax and therefore, the proposal was dropped.

15. In such circumstances, the second respondent erroneously reversed the input tax credit on the ground of lack of clarity in the documents produced. If the second respondent was satisfied with the very same documents while considering the third issue, this Court is at a loss to understand as to how they would not be relevant for consideration while deciding issue No.2.

16. In so far as the issue pertaining to purchases effected from registration cancelled dealers is concerned, it is pointed out that all those cancellations were with retrospective effect and on the effective date, they were registered dealers. It is further brought to the notice of this Court that some of the dealers, whose registration was cancelled, approached this Court and those orders were set aside and the registration certificates were restored. The second respondent ought to have noted that the legal position with regard to this aspect has been considered in the case of Jinsasan Distributors, which decision was brought to the notice of the second respondent, wherein this Court held as follows :

"Allowing the petitions, that the petitioners had purchased the taxable goods

from registered dealers, who had valid registration certificates, paid the tax payable thereon, availed of input tax credit and the Assessing Officers had passed orders granting such benefit. Therefore, the assessment orders granting input tax credit were validly passed. There was no cancellation of the registration certificates of the selling dealers at that point of time. The retrospective cancellation of the registration certificates issued to the selling dealers could not affect the right of the petitioners, who had paid the tax on the basis of the invoices and thereafter claimed the benefit under Section 19 of the Tamil Nadu Value Added Tax Act, 2006. Therefore, the notices, revised assessment orders and the provisional assessment order, seeking to deny the benefit of input tax credit to the petitioners only on the ground that the registration certificates of the selling dealers had been cancelled with retrospective effect, were set aside."

17. Thus, even assuming that the registration certificates were cancelled retrospectively, that would not have any impact on the petitioner's right to claim input tax credit, as, admittedly, the petitioner had produced the original tax invoices and showed that the sale price includes VAT, that they discharged their liability and that payments were effected through bank transactions. That apart, the second respondent, while completing the assessment, stated that in the absence of clarity, the petitioner's contention is not acceptable. This finding lacks clarity.

18. If the second respondent was of the view that there was lack of clarity, nothing prevented the second respondent from calling upon the dealer to appear in person and clarify the issues arising out of the documents, which they had submitted. In such circumstances, this Court is satisfied that the manner, in which, the impugned assessment orders have been passed, is not sustainable in law, more so, when the second respondent has not taken into consideration the law laid down by this Court in several decisions, one of which being in the case of Jinsasan Distributors.

19. In view of all the above, the writ petitions are partly allowed and the finding given by the second respondent on the

issue relating to reversal of the input tax credit for non production of documents under Section 19(13) of the TNVAT Act, is set aside. The second respondent is directed to afford an opportunity of personal hearing to the petitioner, reconsider the documents, clarify any of the issues, if required, take note of the decision in the case of Jinsasan Distributors, which has been affirmed by the Hon'ble Division Bench of this Court in W.A.No.946 of 2016 dated 1.9.2016 [The Asst. Commissioner (CT), Broadway Assessment Circle Vs. M/s.Bhairav Trading Company] and thereafter redo the assessment by strictly adopting the legal principles stated above. No costs. Consequently, the above WMPs are closed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner of Commercial Taxes Department,  
Ezhilagam, Chepauk,  
Chennai-5.
- 2.The Commercial Tax Officer,  
Harbour Assessment Circle,  
Chennai.

+8cc's to Mr.S.Raveekumar, Advocate, S.R.No.56709  
+1cc to the Special Government Pleader(T), S.R.No.56746

WP.Nos.34772 to 34779 of 2016

&

WMP.Nos.29949 to 29956 of 2016

RSI (CO)  
CA(01/11/2016)

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