In the High Court of Judicature at Madras

Dated : 23.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.41016 of 2016 & WMP.No.35028 of 2016

Tvl.Srie Senthil Tex, rep.by its
Proprietor M.Senthilkumar ...Petitioner

Vs

The Assistant Commissioner (CT)
(FAC), Tiruchengode (Rural)
Assessment Circle, Tiruchengode. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the files of the respondent in TIN No.33333202850 dated 24.6.2016, quash the same as being without jurisdiction and authority of law and contrary to the principles laid down by this Court in the judgments reported in (2012) 50 VST 179 (Mad) (Althaf Shoes (P) Ltd. Vs. Assistant Commissioner (CT) Valluvarkottam Assessment Circle Chennai), (2013) 60 VST 283 (Mad) (Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and another) and (2015) 82 VST 457 (Infinity Wholesale Ltd. Vs. Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai-107).

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.K.Venkatesh, GA

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In this writ petition, the petitioner challenges a show cause notice dated 24.6.2016 in respect of the assessment year 2009-10 wherein the respondent proposed to reverse the input tax credit claimed by the petitioner on the ground that on cross verification of Annexure I of the returns filed by the petitioner with that of Annexure II of the selling dealer namely M/s.Sivaram Yarns, it was found that the seller has not reported the sales turnover and not paid tax due thereon.

3. The learned counsel for the petitioner submits that the reason assigned in the impugned notice cannot be a ground to reverse the input tax credit availed by the petitioner. In this regard, the learned counsel for the petitioner relies upoon the decisions in the cases of

(i) Althaf Shoes (P) Ltd. Vs. Assistant Commissioner (CT) Valluvarkottam Assessment Circle Chennai [reported in (2012) 50 VST 179],

(ii) Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and another [reported in (2013) 60 VST 283]

(iii) Infinity Wholesale Ltd. Vs. Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai-107 [reported in (2015) 82 VST 457] and

(iv) Tvl.Thribovan Enterprises Pvt. Ltd. & another Vs. Assistant Commissioner (CT) (FAC), Ranipet SIPCOT Assessment Circle, Ranipet (SIPCOT) (W.P.Nos.24260 and 24261 of 2016 dated 14.7.2016).

4. It is pointed out that this Court in the common order dated 14.7.2016 in W.P.Nos.24260 and 24261 of 2016, considered an identical issue and following the decisions in Althaf Shoes (P) Ltd., Sri Vinayaga Agencies and Infinity Wholesale Ltd., allowed the writ petitions. The operative portion of the common order dated 14.7.2016 reads 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:-

'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 assessees 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 Rule10(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."

5. Though the learned counsel for the petitioner contends that the issue is covered by the decisions of this Court referred to supra, the impugned proceedings in this case is a show cause notice. Therefore, the proper procedure for the petitioner is to send a reply and in the reply, the petitioner can refer to all the decisions and the respondent is bound to consider the same and after due application of mind, take a decision in the matter. This procedure alone will satisfy the principles contemplated under the provisions of the said Act.

6. Accordingly, the writ petition is disposed of by directing the petitioner to submit their objections to the impugned notice, which is stated to have been received by the petitioner on 6.8.2016, within a period of 15 days from the date of receipt of a copy of this order and in the reply, the petitioner is entitled to raise all the legal contentions, which the respondent should consider while passing orders in accordance with law. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (CT) (FAC), Tiruchengode (Rural)
Assessment Circle, Tiruchengode.

+1cc to Mr.R. Senniappan, Advocate, S.R.No.68412
+1cc to the Spl.Government Pleader (Taxes), S.R.No.68291

ppa(CO)
md(24/11/2016)

WP.No.41016 of 2016 &
WMP.No.35028 of 2016