IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:01.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.7507 to 7511 of 2016 &
W.M.P.Nos.6725 to 6734 of 2016

Britannia Industries Ltd.
(Rep by its Regional Commercial and
Finance Manager - R. Ravichandran)
India Land Tech Park
Tower B Plot No.14
Ambattur Indl Estate
Chennai - 600 058 .. Petitioner in all WPs

v.

The Deputy Commissioner (CT)-III (FAC)
Large Tax Payers Unit 34
5th Floor, Dugar Towers
Marshalls Road
Chennai - 600 008 .. Respondents in allWPs

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, Call for the records on the files of the respondent in TIN/33881320020/2010-11, TIN/33881320020/2011-12, TIN/33881320020/2012-13, TIN/33881320020/2013-14 and TIN/33881320020/2014-15 dated 30.12.2015 and quash the same.

For Petitioner : Mr.N.Sriprakash

For Respondents : Mr.Manoharan Sundaram
Addl. Govt. Pleader

COMMON ORDER

The petitioner has filed the above writ petitions to issue a Writ of Certiorari to call for the records relating to the impugned orders dated 30.12.2015 passed by the respondent in respect of assessment years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 and to quash the same.

2. Writ petitions were filed to reverse the Input Tax Credit along with the consequential imposition of penalty passed by the respondent, which is wholly without jurisdiction and contrary to the principles laid down by this court in the judgement reported in 50 VST 179 [Althaf Shoes (P) Ltd v. Assistant Commissioner (CT), Valluvarkottam] and the order of this court made in W.P.(MD)No.17266 of 2015, dated 25.09.2015.

3. According to the petitioner, they had availed Input Tax Credit upon the payment of VAT on their purchases from registered dealers on the basis of the original tax invoices. However, on the ground of alleged non-payment of VAT by the sellers, the petitioner has been directed to reverse Input Tax Credit in total disregard to the principles laid down by this court in the judgements referred to above. In W.P.(MD) No.17266 of 2015, this court, following the judgement reported in 2013 (60) VST 283 (Mad) [Sri Vinayaga Agencies v. The Assistant Commissioner (CT), Chennai and another] , allowed the writ petition.

4. In the judgement reported in 2013 (60) VST 283 (Mad) [cited surpa], in paragraph No.9, it has been held as follows:-

> "9. Sub-section (16) of section 19 states that the Input Tax Credit availed is provisional. It, however, does not empower the authority to revoke the input tax credit availed on a plea that the selling dealer has not paid the tax. It only relates to incorrect, incomplete or improper claim of Input Tax Credit by the dealer. It is not so in these cases. In the present case, the petitioner-dealer, admittedly, has paid the tax to the selling dealer and claimed Input Tax Credit and that was accepted at the time when the self-assessment was made. Even the pre-revision notices and the orders under challenge fairly state that the petitioner-dealer had paid tax to the dealer. It is, therefore, for the department to proceed against the selling dealer for recovery of tax in the manner known to law. The provision under which the present has been initiated, namely, invoking sub-section (16) of Section19, does not appear to be correct on the admitted facts as above. All the revision orders revising the Input Tax Credit on the admitted case of tax having been paid to the selling dealer, therefore, are found to be totally incorrect, erroneous and contrary to the provisions of the TNVAT Act and Rules. As a result, all the orders are liable to be set aside."

5. Mr.Manoharan Sundaram, learned Additional Government Pleader, takes notice for the respondent and submitted that the issue involved in the present writ petitions are covered by the judgement reported in 2013 (60) VST 283 (Mad) [cited surpa]. Further, the learned Additional Government Pleader, submitted that the respondent had preferred appeals as against those judgements and the appeals are pending without any interim orders.

6. In view of the dictum laid down by this court, following the orders of this court, the writ petitions are allowed. Since the issue involved in the present writ petitions relates to the payment of VAT and imposition of penalty by the sellers, the writ petitioners are allowed only in so far as the issue involving the payment of VAT by the sellers. So far as the other issues are concerned, since the petitioner has got appeal remedy, it is open to the petitioner to file appeals as against the impugned orders. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Deputy Commissioner (CT)-III (FAC),
Large Tax Payers Unit 34,
5th Floor, Dugar Towers,
Marshalls Road,
Chennai - 600 008 .

+1cc to the Government Pleader Sr.13036
+1cc to M/S.N.Inbarajan, Advocate Sr.12827[04/03/2016]

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ak(CO)
srg(03/03/2016)