BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.02.2016
CORAM:
THE HONOURABLE MR.JUSTICE B.RAJENDRAN
W.P.(MD)No.3210 of 2016
and
M.P.(MD)No.2802 of 2016

Udayam Super Market,
Rep.by its Proprietor K.Kumarappan,
13-1-221 Madurai Road,
Thiruppathur,
Sivagangai District.
... Petitioner

Vs.

The Commercial Tax Officer,
Thiruppathur Assessment Circle,
Thiruppathur.
... Respondent

Prayer: The Writ petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in TIN 33035502497/2013 - 2014 dated 14.10.2015 and to quash the same as illegal, arbitrary and against the judgment of this Court reported in 82 VST 457 in the case of M/s. Infiniti Agencies and further direct the respondent to afford an opportunity of personal hearing and consider the relevant records and thereafter to pass orders afresh.

For Petitioner : Mr.M.Azeem for Mr.S.Karunakar
For Respondent : Mr.R.Karthikeyan, AGP

O R D E R

The Writ petition has been filed to quash the proceedings in TIN 33035502497/2013 - 2014 dated 14.10.2015 and direct the respondent to afford an opportunity of personal hearing and consider the relevant records and pass orders afresh.

2.The only point raised is that when the selling dealer has not paid the collected tax and it cannot be mulcted on the purchasing dealer, who showed proof of payment of tax on purchase made.

3.In this connection, the learned counsel for the petitioner relies on 2013(60) VST 283 (Mad.), the relevant portion of which reads as follows:

> "10. 5.It is very clearly stated that if the selling dealer has not paid the collected tax and that liability has to be fastened on the selling dealer and it cannot be mulcted on the Petitioner-purchasing dealer who had shown the proof of payment of tax on the purchase made. In this connection, the learned counsel for the Petitioner relies on (2013) 60 VST 283(Mad), relevant portion of which reads as follows:
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> 10.The provision of-Section 19(1) clearly states that. input tax credit can be claimed by the registered dealer, provided if the registered dealer establishes that the tax due on such

purchase has been paid by him in the manner prescribed. The pre-revision notice and the orders clearly state in paragraph 3 that the Petitioner herein had paid the tax to the selling dealer. If that be the case, the Petitioner's case squarely falls under the proviso to Section 19(1) of the TNVAT Act. That is availed of only by following rule 10(2). It is also not in dispute that the self-assessment has been made under Section 22(2) of the TNVAT Act and therefore the Petitioner was justified in claiming the input tax credit.

11. It is another matter that the selling dealer has not paid the collected tax and that liability has to be fastened on the selling dealer. It cannot mulcted on the Petitioner-purchasing dealer, which had shown proof of payment of tax on purchase made.

12.Sub-Section (16) of Section 19 states that the input tax credit availed of is provisional. It, however, does not empower the authority to revoke the input tax credit availed of 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, had 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 action has been initiated, namely, invoking sub-section(.i6) of Section (19) 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."

4.The learned counsel for the petitioner would fairly admit that the petitioner has not sent any reply due to his ill-health. Therefore, one more opportunity has to be given to the petitioner. In order to show the bona fide, the petitioner is ready to deposit 15% of the tax amount.

5.The learned counsel for the respondent would contended as no reply has been received by the respondent from the petitioner, there is no other go but to pass the impugned order.

6.In view of the above, the petitioner is directed to pay 15% of the tax amount as undertaken and agreed on or before 10.03.2016 and on such deposit the impugned order is set aside and the matter will be remitted back to the authorities concerned for giving an opportunity. On such payment being made, the authorities are directed to consider and pass appropriate orders on merits and in accordance with law. The payment of money is a condition precedent.

7.In the result, the Writ petition is allowed. No costs. Consequently, connected C.M.P.is closed.

Sd/-
Assistant Registrar (CO Dept.)I/c

/True copy/

Sub Assistant Registrar

To
The Commercial Tax Officer,
Thiruppathur Assessment Circle,
Thiruppathur.

+1 CC to Mr.S.KARUNAKAR, Advocate, SR No.9058
+1 CC to the Special Government Pleader, SR No.9457

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