In the High Court of Judicature at Madras

Dated: 12.01.2017

Coram

The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition No.1009 of 2017

& WMP No.987 of 2017

International Flavours & Fragrances India Pvt. Ltd.
represented by DV Rangarajan
Manager - Indirect Taxes .... Petitioner

Vs.

The Assistant Commissioner (CT),
Nandambakkam Assessment circle,
Choolaimedu, Chennai - 600 094. .... Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records relating to the Assessment Order TIN/33100840008/2014-15 dated 29.11.2016 passed by the respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.S.Kanmani Annamalai, Additional Government Pleader

O R D E R

1. Issue notice. Mr.S.Kanmani Annamalai, accepts notice on behalf of the respondent.

1.1. With the consent of counsels for parties, the Writ Petition is taken up for final hearing and disposal.

2. This Writ Petition is directed against the order dated 29.11.2016.

2.1. By virtue of the said order, the respondent has reversed the Input Tax Credit (ITC) on purchases from dealers, who had not, according to the respondent, filed their monthly returns. In other words, according to the respondent, the ITC had been wrongly availed by the petitioner. Consequently, the tax liability in the sum of Rs.11,85,838/- has been imposed along with penalty, in the sum of Rs.4,497/-. The penalty has been imposed under Section 27(4) of the Tamil Nadu Value Added Tax Act, 2006 (in short 'the 2006 Act').

3. The facts, which are required to be noted to adjudicate upon the Writ Petition, are, broadly, as follows:

3.1. The petitioner, apparently, in the course of business, had made purchase of goods from local registered dealers on payment of tax, which were used for manufacture of goods, and for resale within the State. Accordingly, the petitioner avers that, ITC was claimed in its monthly returns and, also, ITC was utilised against VAT/CST, payable on the sale of goods.

3.2. Evidently, the petitioner's premises were inspected by the Enforcement Wing of the Commercial Taxes Department, on 26.11.2015. It appears that the Inspecting Officials, upon verifying the details of the VAT paid by the selling dealers, came to the conclusion, that they, in turn, had not reported sale of goods made to the petitioner in the Assessment Years 2011-12 to 2015-16 (part period).

3.3. It is on this basis that notices were issued for the aforementioned period. All notices were dated 12.01.2016. The petitioner avers that two (2) replies were filed qua each of the five (5) assessment years. The first reply is dated 25.01.2016, followed by a reply dated 11.03.2016.

3.4. It is the petitioner's case that all original invoices pertaining to the purchases made from dealers, who had not shown the corresponding sales in their returns, were produced.

3.5. Furthermore, the petitioner has also placed on record the proof of payment of consideration to the selling dealers, which included the price of goods as well as the component of tax. The petitioner has also indicated in the reply that the selling dealers were actively in business.

4. Therefore, the short ground, on which, the petitioner challenges the impugned order, is that, the mere failure on the part of the selling dealers in reporting corresponding sales, (assuming that the state of affairs is true), cannot be the basis of reversing the ITC claimed by the petitioner.

4.1. In support of this contention, learned counsel for the petitioner relies upon the following judgments:

i) Sri Vinayaga Agencies V. Assistant Commissioner (CT), Vadapalani - I Assessment Circle, Chennai and another - [2013] 60 VST 283 (Mad)

ii) The Assistant Commissioner (CT) V. M/s.Althaf Shoes (P) Limited, passed in W.A.Nos.1367 and 1368 of 2016, dated 10.11.2016. and

iii) Infiniti Wholesale Limited (formerly known as Woolworths Wholesale (India) Private Limited) V. Assistant Commissioner (CT) - [2015] 82 VST 457

4.2. Furthermore, counsel for the petitioner informs me that the judgment of the learned single Judge in Infiniti Wholesale Limited (formerly known as Woolworths Wholesale (India) Private Limited) V. Assistant Commissioner (CT) - [2015] 82 VST 457 has been sustained by the Division Bench in

W.A.No.775 of 2016, dated 09.09.2016.

5. Mr.S.Kanmani Annamalai, therefore, says that if a direction is issued by this Court for passing an order afresh, the same will be complied with.

6. Having regard to the contentions raised by the petitioner and having perused the impugned order, according to me, the respondent appears to have misdirected himself in law.

7. The respondent, to my mind, cannot reverse the ITC of a dealer, merely because, the selling dealer does not report the same. If, the Revenue find any discrepancy, it will have to be put to the petitioner and, only if, the purchasing dealer is unable to satisfy the Revenue, as regards the genuineness of the transaction, can any adverse orders be passed against the concerned dealer.

8. In these circumstances, the impugned order is set aside.

8.1. It is, however, made clear, that the respondent will be at liberty to redo the assessment after affording due opportunity to the petitioner. If, the respondent, proposes to redo the assessment, he shall bear in mind, the ratio of the judgments cited above.

9. The Writ Petition is disposed of in the aforesaid terms. Resultantly, connected Miscellaneous Petition stands closed. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

sl
To

The Assistant Commissioner (CT),
Nandambakkam Assessment circle,
Choolaimedu, Chennai - 600 094.

+1cc to M/s.J.Seph Prabakar, Advocate SR.No.3214
+1cc to The Special Government Pleader SR.No.3274

Writ Petition No.1009 of 2017
& WMP No.987 of 2017

RSK(CO)
GN(02/02/2017)