

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.07.2017

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
05.07.2017	25.07.2017

Coram

The Hon'ble Mr.Justice T.S. SIVAGNANAM

W.P.No.5265 of 2017
and W.M.P.No.5584 of 2017

M/s.Sunrise Chennai Distributors Private Ltd.,
rep. by its Director,
No.114, Luz Church Road,
Mylapore, Chennai - 600 004.

.. Petitioner

vs

The Commercial Tax Officer,
T.Nagar Assessment Circle,
46, Pasumpon Muthu Ramalingam Salai,
Chennai - 600 028.

.. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records culminating in the order of the respondent dated 23.12.2016 made in No.TIN33631562900/13-14 and quash the same and consequently grant the benefit of Input Tax Credit as claimed for 2013-14 in view of the returns filed by the petitioner Vendor for the relevant period.

For Petitioner : M/s.G.Thilagavathi
Senior Counsel
for Mr.R.Gopinath

For Respondent : Mr.K.Venkatesh
Government Advocate

ORDER

This writ petition has been filed for issuance of writ of of Certiorarified Mandamus, calling for the records culminating in the order of the respondent dated 23.12.2016 made in No.TIN33631562900/13-14 and quash the same and consequently grant the benefit of Input Tax Credit as claimed for 2013-14 in view of the returns filed by the petitioner's Vendor for the relevant period.

2.The petitioner who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the Central Sales Tax Act, 1956 (CST Act) has filed this writ petition challenging an assessment order passed by the respondent under the TNVAT Act for the year 2013-14. The petitioner would stated that they are a retail chain carrying on business under the name and style "M/s.WAITROSE". During February 2014, the petitioner made outright purchase of a departmental store from M/s.Sabari Super Market Private Limited and applied for a registration under the TNVAT Act and CST Act by filing Form A on 19.02.2014. The petitioner's vendor was also a registered dealer under the provisions of the TNVAT Act. The petitioner was issued with a Sales Tax Registration Certificate dated 03.04.2014 which was received by the petitioner on 10.04.2014 which

was given effect from 19.02.2014, the date of the petitioner's application. The petitioner would state that the procedure required to be followed under Section 39 r/w. Rule 5 of the Tamil Nadu Value Added Tax Rules, 2007 (hereinafter referred to as "the Rules") was violated as the certificate was not issued within a period of thirty days from the date of receipt of the application apart from not being issued a password to enable the petitioner to electronically file the monthly returns. Unless and until the petitioner was able to file their returns electronically and only at that point of time, the benefit of Section 19(11) of the TNVAT Act could be invoked. Ultimately, the password was issued to petitioner to access the Portal only on 30.06.2014, after three months after the lapse of the assessment year 2013-14, thereby rendering it impossible for the petitioner to comply with Section 19(11) of the TNVAT Act for the purpose of filing input tax credit.

3.The respondent by order dated 14.01.2015 rejected the claim of the petitioner for input tax credit for the assessment year 2013-14. The petitioner challenged the said order by filing W.P.No.3820 of 2015 which was dismissed by order dated 16.02.2015. The petitioner preferred an appeal in W.A.No.828 of 2015 and the Hon'ble Division Bench by judgment dated 15.02.2016 allowed the writ appeal by setting aside the order of the Assessing Officer dated 14.01.2015 and remitted the matter back to the Assessing Officer for fresh finding with regard to the question as to whether the appellant was issued a certificate of

registration within time and as to whether the appellant was prevented from filing online returns or manual returns, as the case may be. On such remand, the Assessing Officer passed an order dated 23.12.2016 disallowing the claim of ITC and holding that the petitioner is liable to reverse the ITC claim for the year 2013-14 to the tune of Rs.54,16,090/- and issued a demand dated 23.12.2016. This order dated 23.12.2016 and the consequential demand are impugned in this writ petition.

4.The learned senior counsel appearing for the petitioner assailed the correctness of the impugned order by contending that admittedly as per the findings of this Court in the earlier round of litigation, there was a specific direction to the Assessing Authority to render a fresh finding with regard to the question as to whether the petitioner was prevented from filing online returns or manual returns, as the case may be. However, without adhering to such direction, the respondent has disallowed the input tax credit without examining the merits of the contentions putforth by the petitioner. The respondent failed to take note of the fact that there is a statutory obligation in terms of Section 39 r/w. Rule 5 of the Rules prescribing a time limit for issuance of identification number. When the respondent has admitted the fact that the issuance of password for electronic filing as contemplated under the Rules is not automatic and it involves a procedure for approval by the registering authority to facilitate filing of electronic returns, ought not to have

passed the impugned order disallowing the input tax credit. Therefore, it is submitted that the impugned order is an outcome of non-application of mind as it has been done without taking note of the specific direction issued by the Division Bench. However, the respondent ought to have examined whether there has been a deliberate failure of their statutory due in adhering to the procedure as contemplated under Rule 7(5) and Rule 21 of the Rules. The returns filed for the months of February and March 2014 on 08.09.2014 would be validated for the reason that the password was approved by the authority only on 30.06.2014. Further, the returns filed by the petitioner's predecessor, namely, M/s.Sabari Supermarket for the period February-March would reflect the entitlement of the petitioner for the input tax credit. Refusal to grant the same and imposing an order of reversal of the ITC claimed by the petitioner for the period February to March is unsustainable. The respondent ought to have examined the vital aspect that unless the password is assigned to the petitioner, they would not be able to file the returns electronically and the password having been assigned only on 30.06.2014, the petitioner will not be in a position to electronically file the returns for a retrospective period. On the above grounds, the learned senior counsel prayed for setting aside the impugned order.

5.The learned Government Advocate appearing for the respondent submitted that the petitioner had filed an application for registration on

19.02.2014 and cannot state that the Department had delayed the issuance of the certificate of registration. The said certificate was issued within the time limit as prescribed under Rule 5(1)(a) of the Rules with validation from the date of commencement of business. It is submitted that Rule 5(1)(a) of the Rules emphasis that the registering authority shall give registration certificate within thirty days from the date of receipt of the application excluding the date of filing of the application while computing the time limit. The applicant having filed an application only on 19.02.2014 cannot attribute the delay on the part of the Department. Further, the failure on the part of the petitioner to file manual return for availing input tax credit was elaborately discussed in the proceedings dated 14.01.2015 and 23.12.2016. The petitioner having not taken efforts to file manual return and having done so only after issuance of notice from the Department during September 2014 will clearly show the inertness on the part of the petitioner. Even after the password was assigned, the dealers had not filed returns for the months of February and March 2014 but filed it only on 18.09.2014. Thus, the submission of the respondent is that steps should have been taken by the petitioner to file the manual return and without doing so cannot now challenge the impugned order by raising untenable contentions. Further, the petitioner has been dragging the matter by approaching this Court repeatedly and resorting to remedy under Article 226 of the Constitution of India which is not meant to cut short or circumvent the statutory procedures and availment of statutory remedies. In support of such

contentions, the learned Government Advocate placed reliance on the decision in the case of *Assistant Collector of Central Excise, Chandan Nagar, West Bengal vs. Dunlop India Ltd.* reported in *AIR 1985 SC 330*. Further, it is submitted that the impugned order has been passed in accordance with the directions issued by the Division Bench and if the petitioner is aggrieved, they have to file an appeal as provided under Section 51 of the TNVAT Act.

6. Heard Mrs.G.Thilagavathy, learned senior counsel for Mr.R.Gopinath, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent and perused the materials placed on record.

7. The petitioner is aggrieved by the direction to reverse the input tax credit availed by them for the year 2013-14 under the provisions of the TNVAT Act. The petitioner's contention is that inspite of earlier direction issued by the Division Bench to examine as to whether the petitioner was issued with certificate of registration within time and whether the petitioner was prevented from filing online returns or manual returns, as the case may be, has not been examined. When the petitioner approached this Court earlier by filing W.P.No.3820 of 2015, they had challenged the assessment order on various grounds and more importantly on the ground that the registration was

not given on time and the respondent had violated the statutory provisions and in particular, Section 39 r/w. Rule 5 of the said Rules. The writ petition was dismissed and as against which, an appeal was preferred by the petitioner in W.A.No.828 of 2015. The Division Bench pointed out that though there is a remedy of revision available as against an order passed under Section 84 of the TNVAT Act, revisional remedy is not equivalent to an appeal remedy, more particularly, in the petitioner's case the question is whether they were given the password to enable them to file the return online only belatedly and the question as to whether the petitioner was not allowed to file manual returns which questions were not even gone into in the order passed under Section 84 of the TNVAT Act. It was further pointed out that these questions were very crucial to the decision with regard to reversal of input tax credit. Thus, it was held that there is a clear non-application of mind to a very important fact by the Assessing Officer both in the original order and in the order passed under Section 84 of the TNVAT Act and therefore, held that the petitioner need not be prevented to avail the revisional remedy under Section 54 of the TNVAT Act. After making such an observation and allowing the writ appeal, the matter was remanded to the Assessing Officer for a fresh finding with regard to whether certificate of registration was given on time and whether the petitioner was prevented from filing online return or manual return.

8.Unfortunately, the respondent in the impugned order has not gone into

the aspect as directed by the Division Bench. The petitioner would not be able to file a return electronically as it is admitted by the respondent that the password was given belatedly and for that matter, registration was also done beyond the time limit stipulated under the Act. The second question which ought to have been decided is whether the petitioner was prevented from filing the manual return. There is no definite observation made by the Assessing Officer in this regard. If the petitioner's registration had been delayed, obviously he cannot file a manual return. Above all, the petitioner is not a new dealer, they have taken over an existing business and their vendor had a valid registration with the respondent. Therefore, it is only a transition which required to be done so far as the concerned business. Probably, the verification aspect required to be done with regard to the solvency of the petitioner and other related requirements.

9. Thus, in my considered view, the delay in not adhering to the time frame for effecting registration and giving the password has caused great prejudice to the petitioner and they were unable to access the web portal of the Department for filing a online return and when such mistake lies on the Department, the petitioner should not be put to peril. The respondent is attempting to make out a case by referring to the late filing of the manual return. In my view though the registration certificate might have been despatched to the petitioner during April 2014, the petitioner was justified in

seeking to file online return as the Department is insisting and compelling dealers to adopt the online procedure and discouraging the filing of manual returns. Therefore, even assuming there is a fault on the part of the dealer in not immediately filing the manual return, on account of the delay by the Department in activating the facility for filing e-return by giving the password, the delay in filing the manual return has to necessarily be condoned. This observation is in the light of the peculiar facts and circumstances of the case.

10. For the above reasons, the impugned order calls for interference. Accordingly, the writ petition is allowed and the impugned order is quashed. No costs. Consequently, connected miscellaneous petition is closed.

25.07.2017

cse/pbn
Index : Yes/No

To

The Commercial Tax Officer,
T.Nagar Assessment Circle,
46, Pasumpon Muthu Ramalingam Salai,
Chennai - 600 028.

T.S.SIVAGNANAM, J.

cse/pbn



Pre-Delivery Order in

W.P.No.5265 of 2017
and W.M.P.No.5584 of 2017

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