IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8906 of 2006 &
W.P.M.P.No.9859 of 2006

M/s. Sri Ram Mills,
No.36/9, Karaipudur,
Veerapandi. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Palladam Assessment Circle, Palladam. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the impugned proceedings of the respondent in TNGST/6240480/2002-2003 on his files, and quash the order dated 27.01.2006 passed therein.

For Petitioner : Mrs.Hema Muralikrishnan

For Respondent : Mr.S.Kanmani Annamali
Additional Government Pleader

O R D E R

Heard Mrs.Hema Muralikrishnan, learned counsel for the petitioner and Mr.S.Kanmani Annamali, learned Additional Government Pleader for the respondent.

2.The petitioner is aggrieved by an assessment order passed by the respondent under the provisions of the Tamil Nadu General Sales Act, 1959 (TVGST Act) for the year 2002-03. The petitioner was issued a notice by the respondent on 24.02.2005, alleging that they have purchased yarn from non-existing/unregistered/registration certificate cancelled dealers and therefore, the respondent proposed to revise the turnover and assess the tax at 4% by adding 10% towards freight and gross profit. The petitioner submitted their objection showing that the dealer with whom they effected business is not a non-existing dealer, but an existing dealer, his registration certificate is in force and produced all the relevant details to support the contention.

3.The respondent Assessing Officer instead of verifying the correctness of the stand taken by the petitioner, proposed to confirm the proposal in the notice dated 24.02.2005 on the ground that the burden of proof lies on the petitioner and the petitioner should prove that the other end dealers had paid tax. This finding of the Assessing Officer is clearly a wrong understanding of the provision of the statute and the basic theory of burden of proof.

4.Admittedly, the petitioner has discharged their burden and furnished all details controverting the allegation made against them. That whether the selling dealer had a valid registration for carrying on this business or not, the burden of proof should have been on the Assessing Officer to prove that the contention raised by the petitioner is erroneous, for which purpose, the Assessing Officer should have conducted enquiry of the other end dealer. However, he has mechanically passed the impugned order.

5.When an identical issue came up for consideration under the provisions of Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) in the case of Sri Vinayaga Agencies Vs. The Assistant Commissioner (CT), Vadapalani-I Assessment Circle, Chennai and another reported in [2013] 60 VST 283 (Mad), it was held that merely because the registration certificate of the other end dealer was retrospectively cancelled or if the other end dealer has not remitted tax, that cannot be a ground to reverse input tax credit availed by the purchase dealer. Admittedly, the respondent has not alleged that the other end dealer is a bogus dealer. If such is the allegation then it would be a different matter.

6.Thus, for the above reason it is held that the impugned order is not sustainable in law. Accordingly, writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

abr

To
The Deputy Commercial Tax Officer,
Palladam Assessment Circle, Palladam.

+1cc to Government Pleader sr.56195

+1cc to M/s.B.Raveendran,Advocate sr.56350

W.P.No.8906 of 2006

& WMP.9859/2006

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ss(4/9/2017)