

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR  
and  
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

T.C.R.No.65 of 2017

The State of Tamil Nadu,  
represented by Joint Commissioner (CT),  
Chennai Central Division,  
Chennai - 600 006.

.. Petitioner

Vs.

Tvl.Raj Bros Agencies (India),  
No.14, Bangaru Street,  
Chennai-2.

.. Respondent

**Prayer:** Tax Case Revision Petition filed under Section 60 (M) of the Tamil Nadu Value Added Tax Act 2006, against the order dated 16.02.2015, made in S.T.A.No.58 of 2012, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai.

For Petitioner : Mr.S.Kanmani Annamalai  
Additional Govt. Pleader (Taxes)

**ORDER**

(Order of this Court was made by S.MANIKUMAR, J.)

Instant Tax Case Revision is filed against the order made in S.T.A.No.58 of 2012, dated 16.02.2015, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai.

2. Short facts leading to the revision are that, the respondent / appellant is an assessee on the file of the Assistant Commissioner (CT), Annal Salai - III (now in Annasalai) Assessment Circle, Chennai. Assessee was finally assessed by the assessing authority, for the assessment year 2007-08, under the Tamil Nadu Value Added Tax Act, 2006, which according to the assessee was erroneous.

3. Being aggrieved, assessee filed an appeal, before the Appellate Deputy Commissioner (CT)-IV, Chennai, which was allowed. Against this, State has filed appeal before the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai, which has been dismissed.

4. Tax Case Revision is filed on the following grounds:-

*"1) Recording of the fact, by the Tribunal at page 5 (para-2, line-12) that the seller is still active in the office of Assistant Commissioner (CT), Anna Salai-III Assessment Circle, is factually incorrect as the seller Tvl. Insulation House, is a registered dealer in*

*Chintadripet Assessment Circle, with effect from 01.04.2004 and Registration cancelled, with effect from 15.04.2011.*

*2) Observation of the Tribunal that the "Assessing Officer has not made any attempt to cross verify TIN of their seller, who is also an assessee, in the same Assessment Circle" (Para-2, Page-5 - Lines:13 to 15), is also factually incorrect.*

*3) That Section 17 referred to by the Tribunal, at Page:5, is not relevant to this case, as the question for discussion was about the reversal of ITC, and not about any transaction, that are liable to tax or not.*

*4) That section 19(19) referred by Hon'ble Tribunal at page:5, is totally irrelevant to this case, as the dealer has not declared any closure of business.*

*5) That the decision relied, in the case of Suresh Trading Corporation (109 STC 439), dealt with Maharastra Sales Tax Act, which is not relevant to TNVAT Act,2006. Further, it dealt about the cancellation of Registration of the seller, which is not the case on hand.*

*6) The observation of the Tribunal that self assessment made in the case of the dealer itself, is an establishing factor that claim of ITC is correct, is*

*totally incorrect, as ITC claimed u/s 19(16), is provisional and it is subject to modification, at any point of time.*

*7) The decision relied by the Tribunal, in the case of Althaf shoes and Srivinayaga Agencies, are not relevant, as those relate to purchase from the dealers, whose registration has been cancelled with retrospective effect.*

*8) The Tribunal has not examined the dealers letter dated 04.11.2011 available at Page 507 of the Assessment file which stated that the last 7 digits of supplier TIN, was 0580586 and not discussed in length, as to how the dealers were dealing with a dealer, whose TNGST number was 0580586, relating to some other dealer."*

5. Heard Mr.S.Kanmani Annamalai, learned Special Government Pleader (Taxes) and perused the materials available on record.

6. After considering the facts, provisions of law and the decision of a Hon'ble Division Bench of this Court, in ***Sri Vinayaga Agencies v. Assistant Commissioner (CT), Vadapalani-1, Assessment Circle, Chennai and another*** reported in ***60 VST 283***, the Tribunal paragraph

Nos.7 to 13 held as follows:-

*"In this case, the respondent Tvl. Raj Bros. Agencies (India), Chennai- 2 dealers, were assessed to a tax on a total and taxable turnover of Rs.8,53,84,238/ - and Rs.8,51,87,045/ - under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006 on self assessment basis for the year 2007-08 by the Assessing Officer in his order dated 10.09.2011. Subsequently, it was noticed by the Assessing Officer the dealers have claimed and availed.*

*Input Tax Credit to a tune of Rs.99,571/ - during the period from July 2007 to March 2008 on the purchases effected from Tvl.Insulation House, Chennai for the value of Rs.24,89,267/ -. Since the Registration Number of the seller was found invalid, the Input Tax Credit availed by the dealer was reversed to the extent of Rs.99,571/ - besides levying a penalty of Rs.49,786/ - under Section 27(4)(i) of the Tamil Nadu Value Added Tax Act '2006 by the Assessing Officer vide his revisional order dated 02.02.2012.*

*8. Under the Value Added Tax Act, the tax is payable at every point of sale on value addition. The Act also provides for the set off of the tax if it has been paid or payable by the selling dealer. The said amount of tax can be adjusted or set off by way of Input Tax Credit from the tax which is payable by the purchasing dealer on its subsequent sale. Section 2(24) defines the*

term "Input Tax" which means that:

(24) "Input tax" means the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods including capital goods in the course of this business;

Section 19(1) of the Tamil Nadu Value Added Tax Act '2006 provides for a availment of Input Tax Credit (ITC) accrued on purchases made against Out Put Tax due on sales by a registered dealer. Thus Section 19(1) contemplates exemption from payment of taxes due on sales to the extent of Input Tax Credit accrued on purchases. In the revisional order, the Assessing Officer had denied the Input Tax Credit claimed by the respondent / dealer on goods purchased from Tvl.Insulation House, Chennai - 2 on the ground that the registration the selling dealer was invalid. In fact, the seller Tvl.Insulation House, Chennai -2 who sold the goods to the respondent was a registered dealer under the Tamil Nadu Value Added Tax Act '2006 bearing TIN number 33330582104 in the same assessment circle. The Registration No. allotted to the seller is still active under the Tamil Nadu Value Added Tax Act '2006 in the office of Assistant Commissioner (CT), Annasalai - III assessment circle. Even though the said explanations submitted by the dealer before the Assessing Officer were not at all accepted without assigning any valid reason and he has not made any attempt to cross verify

TIN of their seller who is also an assessee in the same assessment circle. Moreover, it is not the case of the assessing Officer that the seller of the respondent were bill trader or found not existing or producing false invoices in support of his claim of Input Tax Credit. A perusal of the tax invoice produced by the respondent, it clearly indicated that the sellers TIN number along with collection of 4% Value Added Tax on the invoices raised by them.

9. A perusal of section 17 of the Tamil Nadu Value Added Tax Act shows that the burden of proving that the transaction is not liable to tax lies on the assessee in respect of the claim on Input Tax Credit and the dealer has to prove that the transaction by him is not liable to tax under the provisions of the Act. Section 19(9) is the relevant provision for Input Tax Credit, which reads as follows:

"19. (19) Where any registered dealer has availed Input Tax Credit and has goods remaining unsold at the time of stoppage or closure of business, the amount of tax availed shall be reversed on the date of stoppage or closure of such business and recovered."

The relevant rule in respect of the claim of Input Tax Credit is given under rule 10 of the Tamil Nadu Value Added Tax Rules. Rule 10(2) provides the manner of establishing that the claim on Input Tax Credit, which reads as follows:

"10. (2) Every registered dealer who claims Input

*Tax Credit under sub-section (1) of Section 19 shall, produce the original tax invoice, in support of his claim of the Input Tax Credit, containing the following details, namely :-*

- (i) A consecutive serial number;*
- (ii) The date on which the invoice is issued;*
- (iii) The name, address and the taxpayer identification number of the seller;*
- (iv) The name, address and the taxpayer identification number of the buyer;*
- (v) The description of the goods;*
- (vi) The quantity of volume of the goods;*
- (vii) The value of the goods*
- (viii) The rate and amount of tax charged; and*
- (ix) The total value of the goods."*

*10. Going by the above said rule and read along with section 19(1) of the Tamil Nadu Value Added Tax Act, it is clear that so long as the purchasing dealer has complied with the requirements as given under rule 10(2), the claim of the purchasing dealer cannot, by any length of reasoning, be denied by the Revenue. The mere fact that the Revenue had not made an assessment on the assessee's vendor, per se, cannot stand in the way of the Assessing Officer considering the claim of the assessee under Section 19 of the Tamil Nadu Value Added Tax Act. Going by section 17 of the*

*Tamil Nadu Value Added Tax Act that the burden on the purchasing dealer rest to the extent of showing that he is not liable to tax under the Act and read in the context of the fact that the assessee had given his sellers' TIN number and had also produced the invoices evidencing the purchase of materials of payment of tax. When such particulars are available, it is for the Assessing Officer who take necessary action against the vendors who had furnished incorrect Registration number. Without taking re-course to that, the Assessing Officer could not deny the claim of Input Tax Credit made by the respondent. Section 3 of the Tamil Nadu Value Added Tax Act '2006 is the charging section on sale of goods. In this case, the respondent / dealer purchased goods from registered dealer namely Tvl, Insulation House, Chennai, with TIN NO.33330582104 and availed Input Tax Credit on the amount of paid. The Input Tax Credit was availed off on the basis of valid documents and the benefit given cannot be reversed as per the decisions Hon'ble Supreme Court in the case of State Maharashtra v. Suresh Trading Company reported in 109 STC 439 wherein it was held that affirming the decision of the High Court, that a purchasing dealer was entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it. Whatever might be the effect of a retrospective cancellation upon the selling dealer, it could have no effect upon any person who had acted*

*upon the strength of a registration certificate when the registration was current. It was not the duty of person dealing with registered dealers to find out whether a state of facts existed which would justify the cancellation of their registration,"*

*11. In the present case, it is not in dispute that the Registration Certificate of selling dealer is active and therefore, to reverse the Input Tax Credit on the plea that Registration Certificate of the seller was invalid cannot be countenanced. In fact, the respondent purchased the goods from registered dealer and claimed Input Tax Credit for the taxes paid in the State for such purchases. Section 19(1) of the Tamil Nadu Value Added Tax Act '2006 states that Input Tax Credit can be claimed by a registered dealer, if he establishes that the tax due on such purchases has been paid by him in the manner prescribed and that was accepted at the time when the self-assessment was made. The Hon'ble High Court of Madras in the case of Sri Vinayaga Agencies v. Assistant Commissioner (CT), Vadapalani - I assessment circle, Chennai and another reported in 60 VST 283 wherein it was held that "allowing the petition, (i) that at the time of filing the self - assessment return Section 22(2), the petitioner - dealer had followed rule 10(2) of the Tamil Nadu Value Added Tax Rules, 2007 and therefore, could not be said to have wrongly availed of input tax credit wrongly. Section 19(1) states that input tax credit can be claimed by a*

registered dealer, if he establishes that the tax due on such purchase has been paid by him in the manner prescribed and that was accepted at the time when the self-assessment was made. The pre-revision notices and the orders clearly stated that the petitioner-dealer had paid the tax to the selling dealer. If that be the case, the petitioner's case squarely fell under the proviso to section 19(1) of the Act. It was another matter that the selling dealer had not paid collected tax. The liability had to be fastened on the selling dealer and not on the petitioner-dealer which had shown proof of payment of tax on purchases made. The orders were liable to be set aside."

12. Similarly, the Hon'ble High Court of Madras in the case of *Althaf Shoes (P) Ltd. v. Assistant Commissioner (CT) Valluvarkottam Assessment Circle, Chennai* reported in 50 VST 179 wherein it was held that 11 The mere fact that the Department had not made an assessment on the dealer's vendor, per se, could not stand in the way of the Assessing Officer considering the claim of the dealer under section 19 of the Act. Going by section 17 which provided that the burden on the purchasing dealer rested to the extent of showing that he was not liable to tax under the Act and read in the context of the fact that the petitioner-dealer had given his seller's TIN number and had also produced the invoices evidencing the purchase of materials paying tax, the Department could not

*successfully canvass its claim that the petitioner was not entitled to have the refund. It was admitted that the petitioner's vendors were all registered dealers on the files of the Department and that the petitioner had also given the TIN number of these vendors. When such particulars were available, it was for the Department to take necessary action against the vendors, who had not remitted tax collected by them to the State. Without taking recourse to that, the Department could not deny the claim of the petitioner."*

*13. Respectfully following the principles laid down in the above case laws to the fact of the case on hand, we find that the respondent had claimed Input Tax Credit based on valid tax invoice issued by the seller (registered dealer under the Tamil Nadu Value Added Tax Act (2006) and it is not known as to why the Assessing Officer has failed to take note of the evidence produced and give credit to the same while passing the impugned order. In fact, the seller Tvl. Insulation House, Chennai is also an assessee in the office of Assistant Commissioner (CT), Annasalai - III assessment circle - Registration number allotted to the respondent's seller was active during the disputed year. Therefore, the revision of assessment made by the assessing Officer without any basis is not correct. Having considered the facts and circumstances of the case, we are of the considered view that the order of the first appellate authority in setting aside the*

*revision of assessment along with levy of penalty is in order and we see no reason to interfere with the order of the first appellate authority. Accordingly, these two points are answered.*

*In the result, the State Appeal No.58 of 2012 is dismissed."*

7. Though, Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), made submissions and sought for reversal of the order made in S.T.A.No.58 of 2012, dated 16.02.2015, on the file of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Chennai, on the grounds stated supra, going through the material record, and the decisions stated supra, we are of the view that the revision petitioner, has not made out a case for reversal. There is no manifest error grounds raised, and reiterated, do not call for judicial review under Article 226 of the Constitution of India.

8. Accordingly, Tax Case Revision is dismissed. No costs.

[S.M.K., J.] [R.P.A., J.]  
21.12.2017

Index : Yes/No  
Internet : Yes/No  
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S.MANIKUMAR, J.  
AND  
R.PONGIAPPAN, J.

dm

To

The Joint Commissioner (CT),  
State of Tamil Nadu,  
Chennai Central Division,  
Chennai - 600 006.



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