IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 31.10.2017
CORAM
The Hon'ble Mr.Justice T.S.Sivagnanam
W.P.No. 8331 of 2009

M/s.George Oakes Ltd.,
Rep. by its Managing Director,
No.43, Greams Road,
Chennai - 600 006. ... Petitioner

Vs.

1.The Joint Commissioner of Commercial Taxes,
(Revision Petition),
Office of the Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

2.The Deputy Commissioner of Commercial Taxes,
Chennai (East) Division,
PAPJM Building, Greams Road,
Chennai - 6.

3.The Commercial Tax Officer,
Anna Salai III Asst Circle,
Chennai. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings of the first respondent, in R.P.No.39/09 and M.P.No.09/08 and quash the impugned order, dated 30.06.2008 and further to direct the third respondent to allow Input Tax Credit of Rs.18,52,471/- claimed in Form V filed on 31.01.2007, relating to the closing stock value of goods for Rs.1,94,73,351/- purchased after 1.1.2006 and held as closing stock as on 31.12.2006 as per section 88(6)(a) of the Tamil Nadu Valued Added Tax Act, 2006.

For Petitioner : Mr.R.Venkatanarayanan
for M/s. Subbaraya Aiyar
Padmanabhan & Ramamani

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr. R. Venkatanarayanan, the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, the learned Additional Government Pleader for the respondents.

2. The petitioner has filed this Writ Petition, challenging the order passed by the first respondent, dated

30.06.2008, rejecting the Revision Petition filed by the petitioner, challenging the order passed by the second respondent, dated 20.12.2007, in R.P.No.28 of 2007, which confirmed the order passed by the third respondent/Assessing Officer, dated 30.07.2007. The third respondent, by the order, dated 30.07.2007, rejected the claim made by the petitioner for Input Tax Credit (ITC). Thus, the Assessing Officer, first Revisional Authority and second Revisional Authority have decided against the petitioner, and these orders are impugned in this Writ Petition.

3. The controversy involved in this Writ Petition lies in a very narrow compass. The petitioner claimed for ITC, in Form V (filed on 31.01.2007, relating to the closing stock value of goods purchased after 01.01.2006 and held as closing stock as on 31.12. 2006). The petitioner's claim for ITC was in terms of Section 88(6) (b) of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as TNVAT Act), which states that the registered dealer, who claims ITC on stock, shall furnish to the Assessing Officer, the stock inventory with the details of purchases within 59 days from the date of commencement of the TNVAT Act. The manner, in which, such stock inventory with the purchase details have to be furnished has been stipulated under Rule 10 of the Tamil Nadu Value Added Tax Rules, 2007, which deals with ITC. Sub-Rule 3 of Rule 10 would be relevant for the purpose of the resolving the issue involved herein, which reads as follows:-

> "(3) (a) Every registered dealer, other than those who opt to pay tax under sub-section (4) of section 3 or section 6 or section 8, who claims input tax credit for other than capital goods purchased on or after 1st January 2006 held in stock on the commencement of the Act, shall submit a stock inventory statement in Form V in duplicate along with photostat copy of related purchase invoice or bill within thirty days from the date of commencement of the Act".

4. The said Form V, which is required to be filed, in terms of Rule 10(3)(a) is a tabulated Form, where, the dealer has to furnish the description of the goods; purchaser's name and the address; registration number of the seller; relevant purchase invoice/bill number; and the date of purchase value of goods; rate of tax and input tax credit. The Form V also mandates providing of the TIN Number, under the TNVAT Act as well as the Tamil Nadu General Sales Tax Act, 1959. In the year, 2013, the Form has been amended w.e.f. 01.11.2013. The Rule not only says that the petitioner should file the statement in the prescribed form, but also required to produce the photostat copy of the related purchase invoice/bill within 30 days from the date of commencement of the TNVAT Act, 2006.

Section 88 of the Act deals with Repeal, and, in terms of sub-section 6 (b) of Section 88, an opportunity shall be given to the dealer, to claim ITC on the stock inventory, since there was migration from the TNGST regime to the TNVAT regime. The statue provided an opportunity to the assessee. However, such opportunity is with certain conditions.

5. The petitioner's contention is that, Section 88 (6) (b) of the TNVAT Act does not mandate the production of photostat copies, and since the petitioner has filed the Form V within the time stipulated. However, this cannot a submission to get over the rigour of Rule 10 (3) (a) of the TNVAT Act. The manner, in which, the stock inventory statement has to be furnished, and what are the particulars to be furnished, is in the nature of statutory form and statutory rules. Therefore, the petitioner cannot bypass the said procedure and state that, mere filing of Form V without photostat copies of related purchase invoice or bills is sufficient. This provision, having been inserted as transitory provision, strict timelines have to be adhered, or else, endlessly, the dealers will come out with the plea of stock inventory lying with them even much after the advent of the TNVAT Act.

6. Thus, all the above three Authorities, viz., i) the Assessing Officer/Commercial Tax Officer, ii) Deputy Commissioner of Commercial Taxes and the Joint Commissioner have concurrently held against the petitioner both on facts and the legal issue. The findings are factually right and warrants no interference.

7. For all the above reasons, the Writ Petition fails and it is dismissed accordingly.

msm/s

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
1.The Joint Commissioner of Commercial Taxes, (Revision Petition), Office of the Commissioner of Commercial Taxes, Chepauk, Chennai - 600 005.

2.The Deputy Commissioner of Commercial Taxes, Chennai (East) Division, PAPJM Building, Greams Road, Chennai-6.

3.The Commercial Tax Officer,
Anna Salai III Asst Circle, Chennai.

+1cc to Special Government Pleader Sr.No.77259
+1cc to M/s.Subbaraya Aiyar Padmanabhan, Advocate Sr.No.77344

LRS(CO)
sm:18.1.2018

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