IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.14525 to 14527 of 2017
and
W.M.P.Nos.15749 to 15754 of 2017

M/s.Vijay Galaxy,
rep.by its Proprietor-M.Mathiyazhagan,
No.117, Cutchery Street,
Tiruppattur-635 601,
Vellore District. .. Petitioner in all W.Ps.

Vs

The Commercial Tax Officer,(FAC)
Tiruppattur-635 601,
Vellore District. .. Respondent in all W.Ps.

W.P.No.14525 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the respondent in his impugned proceedings made in TIN:33924623139/2012-13 dated 24.05.2017, quash the same as illegal and contrary to the scheme of the Act.

W.P.No.14526 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the respondent in his impugned proceedings made in TIN:33924623139/2013-14 dated 24.05.2017, quash the same as illegal and contrary to the scheme of the Act.

W.P.No.14527 of 2017 filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records on the file of the respondent in his impugned proceedings made in TIN:33924623139/2014-15 dated 24.05.2017, quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Ms.R.Hemalatha

For Respondent : Mr.K.Venkatesh,
Government Advocate

COMMON ORDER

Heard Ms.R.Hemalatha, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate, appearing for the respondent.

2. With the consent of the learned counsel on either side, the main writ petitions itself are taken up for final disposal.

3. These writ petitions have been filed challenging the assessment orders under the Tamil Nadu Value Added Tax Act for the years 2012-2013, 2013-2014 and 2014-2015. The input tax credit claimed by the petitioner was held to be not eligible in terms of Section 19(3) of the Tamil Nadu Value Added Tax Act, on the ground that the selling dealer has not paid the tax.

4. This issue came up for consideration before this Court in the case of Althaf Shoes (P) Ltd. vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai-6 ([2012] 50 VST 179 (Mad)), wherein this Court has pointed out that a perusal of Rule 10 of the Tamil Nadu Value Added Tax Rules, 2007 read along with Section 19(1) of the Tamil Nadu Value Added Tax Act, 2006 made it clear that so long as the purchasing dealer had complied with the requirements as given under rule 10(2), the claim of the purchasing dealer could not be denied by the Department. It was also stated that the Circular issued by the Commissioner clearly stated that so long as the vendor was found to be a registered dealer on the files of the Department, the claim of the dealer for refund could not be rejected nor delayed; 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. It was further stated that 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 therein had given his sellers' 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 therein was not entitled to have the refund. It was admitted in that case that the petitioner's vendor therein were all registered dealers on the files of the Department and that the petitioner therein had also given the TIN number of those vendors. Thus, it was observed that when such particulars were available, it was for the Department to take necessary action against the vendors, who had not remitted the tax collected by them to the State, and without taking recourse to that, the Department could not deny the claim of the petitioner.

5. The above legal position squarely applies to the case on hand, which cannot be and has not been resisted by the respondent Department. Hence for the above reasons, the writ petitions are allowed and the impugned orders are quashed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

KM

To

The Commercial Tax Officer,
Tiruppattur-635 601,
Vellore District.

+3cc to Ms.R.Hemalatha, Advocate, S.R.No.46379
+1cc to the Government Pleader, S.R.No.46155

W.P.Nos.14525 to 14527 of 2017
and
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NM(CO)
CS/18/07/17