In the High Court of Judicature at Madras

Dated: 23.01.2017

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The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition Nos.1493 to 1498 of 2017
& WMP Nos.1399 to 1404 of 2017

M/s.Shree Yarns
rep. by its Proprietor A.D.Annamalai
21, Kongunagar 1st Street,
Tiruppur - 641 607

.... Petitioner in the above W.Ps

Vs.

The Assistant Commissioner (CT)
Kongunagar Circle,
Tiruppur - 641 607.

.... Respondent in the above W.Ps

PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records relating to the proceedings in TIN No.33722442495/2011-12, 2012-13, 2013-14, 2014-15, 2015-16 and 2016-17 dated 12.12.2016 quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondents : Mr.K.Venkatesh, GA

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COMMON ORDER

1. Issue notice. Mr.K.Venkatesh, accepts notice on behalf of the respondent.

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2. With the consent of counsels for parties, the Writ Petitions are taken up for final hearing and disposal.

3. The captioned Writ Petitions are directed against six (6) assessment orders of even date, i.e., 12.12.2016.

3.1. By virtue of the impugned assessment orders, which pertain to Assessment Years (A.Ys), 2011-12, 2012-13, 2013-14,

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2014-15, 2015-16 and 2016-17, the respondent has reversed the Input Tax Credit (ITC), on account of the fact that, the vendor has not paid the requisite tax.

4. Counsel for the petitioner says that, proof, with regard to the transactions entered with the vendor, was placed before the respondent, which has been ignored.

4.1. It is, thus, the contention of the learned counsel for the petitioner, that the petitioner cannot be held liable for infraction of law by the vendor.

4.2. Some what similar issue arose for consideration of this Court in W.P.No.228 of 2017. That Writ Petition was disposed of via order dated 05.01.2017. The relevant observations made therein are set out below:

> 5. Counsel for the petitioner, in my view, correctly argues that reversal of ITC, on the basis of a mere mismatch in information, could not have taken place, and that, this issue is covered by various judgments passed by this Court. For this purpose, learned counsel for the petitioner inter-alia relies upon the following judgments: (i) ALTHAF SHOES (P) LTD. VS. ASSISTANT COMMISSIONER (CT), VALLUVARKOTTAM ASSESSMENT CIRCULE, CHENNAI [2012 (50) VST 179 (Mad)] (ii) SRI VINAYAGA AGENCIES VS. ASSISTANT COMMISSIONER (CT), VADAPALANI - I ASSESSMENT CIRCLE, CHENNAI AND ANOTHER [2013 (60) VST 283 (Mad)] (iii) INFINITI WHOLESALE LIMITED VS. ASSISTANT COMMISSIONER (CT), KOYAMBEDU ASSESSMENT CIRCLE, KOYAMBEDU, CHENNAI [2015 (82) VST 457 (Mad)].
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> 6. Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who appears for the respondent, cannot, but, submit, that the issue is covered by the aforesaid judgments of this Court.
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> 7. I may also note that the Division Bench of this Court, has also taken the same view, vide order, dated 09.09.2016, passed in W.A.No.775 of 2016, titled: The Assistant Commissioner (CT) Presently Thiruverkadu Assessment Circle, Chennai Vs. M/s.Infiniti Wholesale Ltd., (Formerly known as Woolworths Wholesale (India) Pvt. Ltd., Chennai.
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> 8. In view of the above, the impugned order is set aside. The respondent is directed to rework the assessment bearing in mind the judgments referred to above."

5. In these circumstances, I have put to Mr.Venkatesh as to whether the best way forward would be to redo the assessments.

5.1. Mr.Venkatesh concedes that this would be the best way forward.

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6. Accordingly, the impugned assessment orders are set aside. The respondent is directed to redo the assessments, bearing in mind the judgments of this Court, which have been adverted to above.

6.1. The respondent will issue a fresh notice in writing to the petitioner indicating therein the date, time and venue, at which the petitioner is required to appear before him.

6.2. The petitioner will place before the respondent the material, on which, he seeks to rely, if, not already filed, in original, to satisfy the respondent that the transactions are genuine and had, in fact, been undertaken, notwithstanding the fact that the vendors have not paid the requisite tax.

6.3. The respondent, will thereafter, pass a fresh order taking into account the material put forth by the petitioner. In case, the respondent is in possession of any material, on which, he wishes to rely, that material will also be put to the petitioner, so that the petitioner has an opportunity to rebut the same.

7. The Writ Petitions are, accordingly, disposed of in terms of the aforesaid directions. Resultantly, connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

sd/
Assistant Registrar

/true copy/

Sub Assistant Registrar

sl

To

The Assistant Commissioner (CT)
Kongunagar Circle,
Tiruppur - 641 607.

+6cc to Mr.S.Raveekumar, Advocate SR.No.4229(24/02/2017)
+1cc to Special Government Pleader SR.No.4552.

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& WMP Nos.1399 to 1404 of 2017

PK(CO)
GN(14/02/2017)

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