

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.19573 to 19577 of 2017 and
W.M.P.Nos.21130 to 21139 of 2017

M/s.Delta Furniture Private Limited,
Rep by its Director Mr.S.R.Santhosh Kumar
No.C-11, SIPCOT II, Kumudepalli Post,
Hosur 635 126. Petitioner in all W.Ps

Vs.

1.The Assistant Commissioner (CT),
Hosur (South), Hosur.

2.The Joint Commissioner,
Salem.

.... Respondents in all W.Ps

Prayer: Writ Petitions filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in TIN NO.33953364596/2010-11, 2011-12, 2012-13, 2013-14, 2014-15 respectively dated 20.03.2017, quash same being arbitrary, unreasonable, illegal and ultravires the provisions of Tamil Nadu Value Added Tax Act, 2006 and further direct the first respondent to refund the amount of tax Rs.43,710/-, Rs.1,02,515/-, Rs.52,343/-, Rs.93,499/-, Rs.54,736/- respectively.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.K.Venkatesh,
Government Advocate

C O M M O N O R D E R

Heard Mr.V.Sundareswaran, learned Counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondents.

2. With the consent on either side, the writ petitions themselves are taken up for disposal.

3. The petitioner, who is a registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act (TNVAT Act), 2006, has filed these writ petitions to quash the orders of

assessment for the assessment years 2010-11 to 2014-15, insofar as it directs reversal of input Tax Credit, for the only reason that the other end dealers have neither filed returns nor paid taxes.

4. The petitioner had filed returns for the above relevant assessment years, which was scrutinized by the respondent and notices dated 20.08.2015, were issued for all assessment years, stating that on cross verification of monthly returns, filed for the year 2010-11, with the department's website, it was found that the petitioner has reported higher purchases and availed Input Tax Credit in excess. Thus, for such reason, the respondent proposed to reject the returns filed for all the assessment years as incorrect and proposed to reverse the Input Tax Credit availed by the petitioner.

5. The petitioner submitted their reply dated 22.01.2016, requesting an opportunity to produce necessary documents to prove the genuineness of their transactions for all the assessment years. It appears that the first respondent-Assessing Officer did not accede to the said request. Therefore, the petitioner was compelled to approach the second respondent-Joint Commissioner, stating that they have requested the first respondent to provide them an opportunity for being heard to explain the returns which was refused without giving any proper reasons and further stated that they were ready to produce necessary documents to prove the correctness of the records and requested the Joint Commissioner to issue appropriate direction to the first respondent, to grant an opportunity of being heard to prove the correctness of their accounts, demand of tax and penalty may be dropped.

6. It appears that the Joint Commissioner has issued necessary instructions, after which, the first respondent by notice dated 30.06.2016, directed the petitioner to appear before him on 08.07.2016. The petitioner is stated to have appeared before the first respondent and produced all original purchase bills along with the xerox copies to show that all purchases were made against the tax invoices and cheque payments, which were accounted in the books of accounts. With regard to other names given in the web-report, the petitioner denied any business transactions with those two dealers namely Visual Engineering and Sree Devi Powder Coating.

7. The petitioner in the affidavit filed in support of all the writ petitions stated that the first respondent was reluctant to accept the documents produced by the petitioner and it appears that because of the

directives issued by the second respondent, the personal hearing was granted and not for the purpose to examining the documents produced by the petitioner. The learned counsel for the petitioner submitted that without considering any of the objections and documents, the impugned orders has been passed without either accepting or rejecting the petitioner's representation.

8. On reading of the impugned orders, it is seen that the so called reason is contained only in one paragraph under sub-heading "observation". Even in that paragraph, the first respondent has not clearly stated as to why the part of the claim for Input Tax Credit has been negatived. He has stated that he has verified the connected records and the tax invoices were compared and verified thoroughly with other end dealers Annexure-II.

9. Therefore, this Court has to presume that the reason for directing reversal of a portion of the Input Tax Credit availed by the petitioner is for the reason that the other end dealers has not filed returns and not paid the tax. Hence, the legal issue would be whether the Input Tax Credit can be denied for the reason that the other end dealers had not been assessed and not filed the returns. The issue is no longer res integra and has been decided in several cases and this Court has followed those decisions in the case of M/s.The Computer Consultants Vs. The Assistant Commissioner(CT), Hosur, in W.P.Nos. 305 to 308 of 2016, dated 02.06.2016 and in the case of M/s.Faiveley Transport Rail Technologies India Limited Vs. The Assistant Commissioner in W.P.Nos.27107 to 27111 of 2016, dated 04.08.2016.

10. Under similar circumstances, the writ petitions were allowed and the assessment orders were quashed. It is interesting to note that the respondent in those two batch of cases is the very same officer namely, the the first respondent herein. Therefore, he cannot plead ignorance of orders passed and ignorance of law is no excuse. At this Juncture, it would be worthwhile to refer to the relevant paragraphs in the order passed in the case of M/s.Faiveley Transport Rail Technologies India Limited Vs. The Assistant Commissioner (CT), wherein it was held as follows:

"4.The legal issue which falls for consideration in these writ petitions concerning the first issue which has been decided against the petitioner is whether the input tax credit can be denied to the petitioner for the reason that the seller had not been assessed or the selling dealer has not filed the returns. This issue is no longer res integra and has been

decided by this Court in the case of Althaf Shoes (P) Ltd. vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai-6 reported in (2012) 50 VST 179 (Mad) followed in the case of Infiniti Wholesale Limited vs. Assistant Commissioner (CT), Koyambedu reported in (2015) 82 VST 457. These decisions were followed by me in a order passed in W.P.Nos.305 to 308 of 2016 dated 02.06.2016 (M/s.The Computer Consultants vs. The Assistant Commissioner, Hosur (South) Assessment Circle, Hosur and another), wherein it was held as follows:

7.....In the case of Infiniti Wholesale Ltd.,, referred above, this Court took into consideration the decision in the case of Althaf Shoes, referred above, and other decisions and held as follows:-

22. In the case of Althaf Shoes (Pvt) Ltd., cited supra, the petitioner was a dealer and exporter of finished leather and other products, who claimed refund of ITC under Section 18 (2) of the VAT Act in respect of the exports made. Though the refund was granted, subsequently notice was issued seeking to withdraw the relief on the ground that its dealer had not reported the sales turnover and remitted tax and an order was passed, withdrawing the relief granted and levying penalty. While considering the said case, it was held that the circular issued by the Commissioner clearly states that so long as the vendor is found to be a registered dealer on the files of the Revenue, the claim of the assessee for refund could not be rejected nor delayed. Revenue in the said case did not deny, as a matter of fact, that the assessee's vendors are all registered dealers on the files of the Revenue and the assessee had also given the TIN number of these vendors. When such particulars are available, it is for the Revenue to take necessary action against the vendors, who had not remitted tax collected by them to the State. Without taking

recourse to that, the Revenue could not deny the claim of the assessee. Going by Rule 10(2) of TN Vat Rules read along with section 19(1) of the TN Vat 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. A reading of the circular issued by Commissioner along with the provisions of the Act makes it clear that there is nothing repugnant in the said circular issued by the Commissioner as a head of the Department as regards the provisions of the Act on input-tax credit claim. Holding so, allowed the writ petition.

23. In the case of Sri Vinayaka Agencies, cited supra, the petitioner was dealer in lubricants, purchasing lubricants from a registered dealer. On inspection, it was found that the vendor / dealer had not filed monthly returns nor paid tax to the Department. Though the petitioner had paid tax to the selling dealer, revision notice was issued proposing that the ITC should be reversed on the failure of the selling dealer in paying the tax. Allowing the said writ petition, it was held that at the time of filing the self-assessment return under 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, it was held that the petitioner's case therein squarely fell under the proviso to Section 19 (1) of the Act. Further, it was another matter that the selling dealer had not paid the 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 thus set-aside."

11. Thus, for all the above reasons mentioned in the preceding paragraphs and in the light of the settled legal position, the only conclusion that can be arrived at in these cases is to hold that the impugned orders are wholly unsustainable, arbitrary and illegal. Therefore, the writ petitions are allowed and the impugned orders are quashed, wherever, the first respondent has directed reversal of Input Tax Credit. Consequently, the attachment made on the petitioner's bank account is directed to be raised and whatever tax has been collected by way of bank attachment shall be adjusted as against future tax dues payable by the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

- 1.The Assistant Commissioner (CT),
Hosur (South), Hosur.
- 2.The Joint Commissioner,
Salem.

+1cc to M/s.V.Sundareswaran,Advocate sr.54757

W.P.Nos.19573 to 19577 of 2017

ppa (co)
ss (30/08/2017)