IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.01.2017

CORAM

THE HONOURABLE Mr.JUSTICE RAJIV SHAKDHER

W.P.Nos.44453 to 44455 of 2016
and W.M.P.Nos.38297, 38298 & 38299 of 2016

M/s.Casa Grande P Ltd.,
Rep. by its Authorised Signatory
R.Murugan,
No.111, 5th Floor,
NPL Devi, L.B.Road,
Thiruvanmiyur,
Chennai-41. ... Petitioner in all WPs

Vs

1.The Assistant Commissioner,
Thiruvanmiyur Assessment Circle,
Chennai.

2.The State of Tamil Nadu,
Rep. by its Secretary,
Commercial Taxes and Registration Department,
Fort St. George,
Chennai-9.

3.The Deputy Commissioner [CT],
Zone-VIII, Greams Road,
PAPJM Buildings,
Chennai-6. ... Respondents in all WPs

W.P.No.44453 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records of the first respondent in TIN 33070761794/2013-14 dated 25.11.2016, in so far as it relates to reversal of input tax credit on purchases made from registered dealers whose registration certificate were cancelled retrospectively, quash the same as ultravires the provisions of the Tamil Nadu Value Added Tax Act, 2006 being arbitrary unreasonable and contrary to the decision of the Apex Court in 109 STC 439 and this Hon'ble Court in 59 VST 256.

W.P.No.44454 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records of the first respondent in TIN 33070761794/2014-15 dated 25.11.2016, in so far as it relates to reversal of input tax credit on purchases made from registered dealers whose registration certificate were cancelled retrospectively, quash the same as ultravires the provisions of the Tamil Nadu Value Added Tax Act, 2006 being arbitrary unreasonable and contrary to the decision of the Apex Court in 109 STC 439 and this Hon'ble Court in 59 VST 256.

W.P.No.44455 of 2016 : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records of the first respondent in TIN 33070761794/2015-16 dated 25.11.2016, in so far as it relates to reversal of input tax credit on purchases made from registered dealers whose registration certificate were cancelled retrospectively, quash the same as ultravires the provisions of the Tamil Nadu Value Added Tax Act, 2006 being arbitrary unreasonable and contrary to the decision of the Apex Court in 109 STC 439 and this Hon'ble Court in 59 VST 256.

For Petitioner : Mr.V.Sundareswaran
in all WPs

For Respondents : Mr.K.Venkatesh,
in all WPs Government Advocate

C O M M O N O R D E R

1. Issue notice. Mr.K.Venkatesh, learned Government Advocate, accepts notice on behalf of the respondents.

2.1. With the consent of the counsel for parties, the captioned Writ Petitions are taken up for hearing and final disposal.

2.2. The captioned Writ Petitions pertain to three Assessment Years, i.e., 2013-14, 2014-15 and 2015-16. In each of the captioned Writ Petitions, there are separate orders of even date 25.11.2016. Amongst others, the grievance of the petitioner, is that, Input Tax Credit has been reversed on the ground that the sales tax registration of the seller has been cancelled.

3. Counsel for the petitioner says that, the reason given in the impugned orders cannot be sustained, in view of the judgments of this Court.

4. For this purpose, reliance is placed by the learned counsel for the petitioner on the follwing cases.

i. Sri Vinayaga Agencies Vs Assistant Commissioner [CT], Vadapalani-I Assessment Circle, Chennai and another reported in [2013] 60 VST 283[Mad].

ii. Division Bench order of this Court dated 01.09.2016 passed in a batch of Writ Appeals, the lead case being W.A.No.946 of 2016, titled : The Assistant Commissioner [CT], Broadway Assessment Circle, Chennai-1 Vs M/s.Bhairav Trading Company, Rep. by its Proprietor, No.4, First Floor, Singanna Naicken Street, Parrys, Chennai-1.

5. On the other hand, Mr.K.Venkatesh, who appears for the respondents says that, the petitioner appears to be a bill trader.

5.1. In support of this submission, the contention advanced by the respondent is that, the petitioner was unable to prove transportation of the material it is said to have bought. It is further stated, though the amounts were paid to the seller, via banking route, the accounts of the recipients were either terminated or, were rendered inoperative.

5.2. Counsel for the respondents says, therefore, that there is a doubt with regard to the genuineness of the transaction.

6. In rejoinder, counsel for the petitioner says that, information with regard to transportation of the material purchased was furnished, which has not been considered while passing the impugned orders.

7. It is also the contention of the learned counsel for the petitioner that the information now sought by the respondents, is covered by the Proviso to Section 19 of the Tamil Nadu Value Added Tax, 2006 [in short “2006 Act”], which was brought into force, only on 29.01.2016.

7.1. Counsel for the petitioner further says that, prior to insertion of the Proviso to Section 19 of the 2006 Act, an assessee could claim input credit, by placing reliance solely on the copies of the invoice.

7.2. Notwithstanding the above, counsel for the petitioner submits that, documents were filed to demonstrate that the transaction with the sellers was genuine.

8. Having regard to the above aforestated facts and circumstances and, the assertions made by the counsels before me, the impugned assessment orders are set aside. The respondents will re-do the assessments, after giving due opportunity to the petitioner, with regard to the assertions articulated in the Writ Petition, that is, the transactions with the sellers in issue were genuine.

8.1. For this purpose, the authorised representative of the petitioner will present himself before the first respondent on 17.01.2017 at 11.00 a.m. In case, the said date is not convenient to the first respondent, he shall have liberty to fix another date, which is proximate to the date of hearing fixed above.

9. Needless to say that the first respondent will conclude the assessment expeditiously, though, not later than ten (10) weeks from the date of receipt of a copy of this order.

10. As indicated above, the captioned Writ Petitions are disposed of. Consequently, pending Miscellaneous Petitions are closed. There shall, however, be no order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Assistant Commissioner,
   Thiruvanmiyur Assessment Circle,
   Chennai.

2. The Secretary to Government,
   Commercial Taxes and Registration Department,
   Fort St. George,
   Chennai-9.

3. The Deputty Commissioner (CT),
   Zone-vIII, Greams Road,
   PAPJM Buildings, Chennai-6.

   + 3 CCS to M/S. V. Sundarewaran,
   Advocate (SR.NO.68).

   + 1 CC to Spl. Government Pleader (Taxes),
   High Court, Chennai-104. (SR.NO.159).

W.P.Nos.44453 to 44455 of 2016
and
W.M.P.Nos.38297,38298 & 38299 of 2016

AD (CO)
VR(23/01/2017)