



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2017

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD) .No.1907 of 2017

and

W.M.P. (MD) No.1567 of 2017

M/s.Bhavanji Mills,
Rep. by its Partner Harish B. Patel,
S/o. Bhavanji Patel,
No.51, Madathupatti Road,
Rajapalayam, Virudhunagar District. ... Petitioner

Vs.

The Assistant Commissioner (CT-I),
Commercial Tax Department,
Rajapalayam, Virudhunagar District. ... Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the respondent in TIN No.33406040304/2008-09, dated 07.12.2016 and quash the same.

For Petitioner : Mr.T.Bashyam
For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

O R D E R

This Writ petition has been filed challenging the impugned order passed by the respondent in TIN No.33406040304/2008-09, dated 07.12.2016.

2.The brief facts which are necessary for the disposal of this Writ Petition are as follows:-

2(a). The petitioner is carrying on cotton yarn business in the name and style of M/s.Bhavanji Mills. The petitioner is a partnership concern and they are registered as a dealer and for the Assessment Year 2008-09, the petitioner filed their return and paid the tax. On 18.02.2015, the petitioner's place of business was inspected by the Enforcement Wing Officials and submitted a report to the respondent.



2(b). Based on the report of the Enforcement Wing, the respondent issued a notice to the petitioner on 11.12.2015, intimating the petitioner about the proposal to revise the assessment for the year 2008-09. In the notice, the respondent stated that certain purchases which were shown by the petitioner were not accounted by the petitioner's supplier. Since the petitioner has availed Input Tax Credit to the tune of Rs.70,611/-, the said amount was shown as the amount recoverable from the petitioner by way of reversal of Input Tax Credit. It is to be seen that nowhere in the proposal it was stated that the petitioner had not paid the tax to their supplier. It was only on the basis of non-disclosure of the transaction by the petitioner's supplier, the revision of assessment was proposed.

2(c). The petitioner gave a detailed reply along with the invoices to show that the petitioner's supplier has collected tax from the petitioner by including the tax component in the invoices. Since the petitioner purchased goods from their seller by paying tax, reported the same in Annexure-I of their return, it was contented before the respondent that the Input Tax Credit availed by the petitioner could not be denied and there is no need to reverse the Input Tax Credit availed by the purchaser of the goods merely because the selling dealer did not account for the sales nor pay tax to the department.

2(d). Despite the fact that the petitioner has submitted their reply along with all documents and materials, the respondent confirmed the proposed revision of assessment. It is against the revision of assessment, as per the proceedings of the respondent dated 07.12.2016, the petitioner has preferred the above Writ Petition.

3. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

4. From the perusal of the impugned order, it is evident that the respondent has not disputed the fact regarding the payment of tax by the petitioner to their seller. There is no reference in the impugned order about the sufficiency of proof for the actual payment of tax that has been paid to the petitioner's seller, as found from the invoices produced before the respondent. However, without an application of mind, the respondent recorded a finding that the objections raised by the petitioner are not acceptable without actually considering the facts that are relevant and borne out from records. Hence, there is total non-application of mind. Though the respondent has filed counter, even in the counter, there is no denial with regard to the statements in the affidavit filed by the petitioner in support of this Writ Petition about the payment of tax by the petitioner to their seller.



5. It is in these circumstances, the learned counsel for the petitioner relied upon an unreported Judgement of this Court dated 29.01.2013 in W.P.No.2036 to 2038 of 2013 wherein this Court has entertained a Writ Petition despite the petitioner therein has an alternative remedy of appeal. It was held in the above said Judgement as follows:-

"Sub-section (16) of Section 19 states that the input tax credit availed is provisional. It, however, does not empower the authority to revoke the input tax credit availed on a plea that the selling dealer has not paid the tax. It only relates to incorrect, incomplete or improper claim of input tax credit by the dealer. It is not so in these cases. In the present case, the petitioner-dealer, admittedly, had paid the tax to the selling dealer and claimed input tax credit and that was accepted at the time when the self-assessment was made. Even the pre-revision notices and the orders under challenge fairly state that the petitioner-dealer had paid tax to the dealer. It is, therefore, for the department to proceed against the selling dealer for recovery of tax in the manner known to law. The provision under which the present action has been initiated, namely invoking sub-section (16) of Section 19, does not appear to be correct on the admitted facts as above. All the revision orders revising the input tax credit on the admitted case of tax having been paid to the selling dealer, therefore, are found to be totally incorrect, erroneous and contrary to the provisions of the TNVAT Act and Rules. As a result, all the orders are liable to be set aside".

6. In another judgment of this Court dated 06.11.2014 in Writ Petition No.9265 of 2013, this Court has observed as follows:

"24. This Court is of the view that the above referred to decisions squarely cover the case on hand. The only conclusion that could be arrived is the ITC availed by the petitioner could not have been proposed to be reversed or reversed on the grounds stated by the respondent, i.e., the selling dealer has not filed returns or not paid taxes or they were unregistered dealers or their registrations were retrospectively cancelled.

25. As noticed above, the exercise of the jurisdiction by the respondent itself is ex-facie arbitrary and the proceedings are not only vitiated by serious procedural infirmities, but are arbitrary and unreasonable and without jurisdiction and held to be invalid. Therefore, the writ petition is allowed and the impugned order, dated 25.02.2013, is hereby set-aside. No costs. Consequently, the connected MPs are closed."



7. In this case also it is demonstrated before this Court that the respondent failed to apply his mind to the facts stated in the reply to the pre-revision notice issued by the respondent. The impugned order reveals that there is total ignorance of the factual issue raised by the petitioner. The respondent even before this Court has not denied the statement of facts found in the affidavit filed in support of this Writ Petition. The respondent also did not raise any issue regarding the genuineness of the documents filed by the petitioner along with the reply to the pre-revision notice. As held by this Court repeatedly that the respondent cannot reverse Input Tax Credit availed by the petitioner after paying tax to its seller. The payment of tax by petitioner is supported by sufficient materials and documents. The Input Tax Credit availed by the petitioner cannot be reversed on the ground stated by the respondent i.e., the selling dealer has not filed any returns nor paid tax. Hence, this Court has no other option but to allow this Writ Petition. The impugned order passed by the respondent vide proceedings dated 07.12.2016 is quashed. However, there is no order as to costs. Consequently, connected W.M.P. (MD) No.1567 of 2017 is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner (CT-I),
Commercial Tax Department,
Rajapalayam, Virudhunagar District.

+1cc to Mr.T.BASHYAM Advocate in SR. No.14604

CMR/GSP
JS/SV.MMS/2P-3C/5.05.2017

W.P. (MD) .No.1907 of 2017
and
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