IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.02.2018

Coram

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

Writ Petition Nos.1001 to 1004 of 2018
and
W.M.P.Nos.1190 to 1193 of 2018

Tvl. Suresh Enterprises,
rep. by its Proprietor,
Gheesulal Jain. ...Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (ST)
Annadhanapatty Assessment Circle,
Salem. ...Respondent in all W.Ps.

Prayer in W.P.No.1001 of 2018:

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records on the files of the respondent, in C.S.T.No.418876/2010-11, dated 29.12.2017, and to quash the same and to direct the respondent to redo the assessment in accordance with provisions of the Act, permitting the petitioner to adjust the Central Sales Tax, payable of Rs.7,77,869/- for the assessment year CST No.418876/2010-11, against the excess input tax available.

Prayer in W.P.No.1002 of 2018:

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records on the files of the respondent, in C.S.T.No.418876/2011-12, dated 29.12.2017, and to quash the same and to direct the respondent to redo the assessment in accordance with provisions of the Act, permitting the petitioner to adjust the Central Sales Tax, payable of Rs.5,64,050/- for the assessment year CST No.418876/2011-12 against the excess input tax available.

Prayer in W.P.No.1003 of 2018:

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records on the files of the respondent, in

C.S.T.No.418876/2012-13, dated 29.12.2017, and to quash the same and to direct the respondent to redo the assessment in accordance with provisions of the Act, permitting the petitioner to adjust the Central Sales Tax, payable of Rs.8,47,635/- for the assessment year CST No.418876/2012-13, against the excess input tax available.

Prayer in W.P.No.1004 of 2018:

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records on the files of the respondent, in C.S.T.No.418876/2013-14, dated 29.12.2017, and to quash the same and to direct the respondent to redo the assessment in accordance with provisions of the Act, permitting the petitioner to adjust the Central Sales Tax, payable of Rs.10,83,911/- for the assessment year CST No.418876/2013-14, against the excess input tax available.

For Petitioner in all W.Ps. : Mr.A.N.R.Jayaprathap

For Respondent in all W.Ps. : Mr.M.Hariharan, Additional Government Pleader

COMMON ORDER

Heard Mr.A.N.R.Jayaprathap, the learned counsel appearing for the petitioner and Mr.M.Hariharan, the learned Additional Government Pleader for the respondent.

2. The petitioner, who is a registered dealer on the file of the respondent, under the provisions of both Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and Central Sales Tax, 1956 (CST Act) has filed these Writ Petitions, challenging the assessment orders passed under the provisions of the CST Act, 1956 for the assessment years 2010-11 to 2013-14.

3. The respondent issued notices, dated 25.08.2015, stating that, on scrutiny of the monthly returns, it was noticed that the petitioner has effected commission sales for the years to other state dealers against 'C' Forms and adjusted the tax due from the money, which has been accumulated to the input tax credit (ITC) of the petitioner. The respondent proposed that, adjustment of input tax credit is not eligible according to Section 19 (2) of the TNVAT Act read with Rule 10 (7) (c) of the TNVAT Rules, 2007.

3.1) On receipt of the said notices, the petitioner submitted their objections both on consignment sales as well as on legal issues and has referred to a decision of this Court, in the case of Tvl. Sogan Starch Industries, Salem Vs. Assistant Commissioner (CT) Leigh Bazaar Circle, in W.P.No.68 of 2015, wherein, the Court, after taking note of the scope of Section 19 (17) of the TNVAT Act held that, adjustment of excess tax was proper.

3.2) The respondent, while completing the assessments, seek to distinguish the decision in the case of Tvl. Sogan Starch Industries (supra) by stating that, it does not relate to the petitioner. Unfortunately, this is not the manner, in which, the Assessing Officer should consider the decision of the Court. What is required to be seen by the Assessing Officer is the ratio decidendi, which has been laid down in the said decision. The Court, after referring to Section 19 (17) of the TNVAT Act, held that, if ITC determined by the Assessing Officer for a year exceeds the tax liability, then, the excess can be adjusted against the outstanding tax due from the assessee. The Department has not preferred any Appeal against the order passed in the case of Tvl. Sogan Starch Industries (supra).

4. Thus, the decision in the case of Tvl. Sogan Starch Industries (supra) binds the respondent and the reason given by the respondent for not applying the decision is incorrect. Therefore, when Section 19 (17) provides that, if the ITC determined by the Assessing Officer for a year exceeds tax liability for that year, the excess can be adjusted against any outstanding tax due from the dealer/assessee The word 'any' has significance. The petitioner, being the registered dealer, both under the TNVAT Act and CST Act, would be entitled to adjust the ITC and for such liability under the CST Act. Therefore, there is absolutely no case made out by the respondent for revision of the assessments for the relevant years.

5. Thus, for the above reasons, the petitioner is entitled to succeed. Accordingly, these Writ Petitions are allowed, the impugned orders are quashed. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sd

To

The Assistant Commissioner (ST)
Annadhanapatty Assessment Circle,
Salem.

+ 1 cc to Mr. A.N.R. Jayaprathap, Advocate SR.8040

+ 3 ccs to Mr. A.N.R. Jayaprathap, Advocate SR.8040(09.03.18)

Writ Petition No.1001 to 1004 of 2018

NM(CO)
EU(21/2/2018)