IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.04.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.8697 of 2017
and
W.M.P.No.9528 of 2017

M/s. R.K.K.R. Steels Ltd.,
rep. by its Director Joseph Philip. ...Petitioner

Vs.

The Assistant Commissioner (CT)
Thiruvottiyur Assessment Circle,
No.791, T.H. Road, Chennai - 600 019. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records on the file of the respondent, in TIN : 33301101119/2013-14, dated 01.02.2017, and to quash the same as illegal, contrary to the provisions of the Act and law laid down by this Court, in respect of reversal of ITC under Section 19 (15) based on the RC Cancellation of the dealer and interstate sale of manufacture goods against C forms under Section 19 (2) (v) of the Act.

For Petitioner : Mr.T.Pramod Kumar Chopda

For Respondent : Mrs.G.Dhanamadhri
Government Advocate

O R D E R

Heard Mr.T.Pramod Kumar Chopda, the learned counsel appearing for the petitioner and Mrs.G.Dhanamadhri, the learned Government Advocate appearing on behalf of the respondent.

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act, for brevity) has filed this Writ Petition, challenging the assessment made on them under the provisions of the TNVAT Act for the AY 2013-14, dated 01.02.2017.

3. Three issues arise in the matter for consideration, viz. (i) Reversal of ITC in respect of purchases, which were made by the petitioner from the registration cancelled dealers; (ii) Reversal of ITC with regard to interstate purchases and (iii) Refund of excess ITC, which has been reversed in respect of consignment transfer.

3.1. So far as the first issue is concerned, the learned counsel appearing for the petitioner would vehemently contend that, cancellation of the registration of the selling dealers was with retrospective effect. However, from the perusal of the impugned order as well as the counter affidavit filed by the respondent, it is seen that the cancellation of the registration was with effect from 14.08.2012 only, and it is not with retrospective effect. It is the contention of the learned counsel appearing for the petitioner that, it is the respondent, who have to file record to show that, it is prospective cancellation of registration and not a retrospective cancellation of registration. In my considered view, this exercise cannot be done by a Writ Court, and this is a disputed question of fact and Writ Court cannot be expected to ascertain, as to when the cancellation took place, when the allegation is that, the selling dealer is unavailable and the petitioner themselves are unable to contact him. Therefore, on this issue, the petitioner has to necessarily file an Appeal.

3.2) With regard to the second issue, viz., Reversal of ITC with regard to interstate purchases, the petitioner pleads that, no ITC was claimed in the monthly return on any of the interstate purchases, much less, interstate purchases mentioned in the notice. Further, it is submitted that, the entire interstate purchases were duly disclosed in the Annexure-I of the monthly returns for the purpose of generating computerized 'C' forms, but no ITC was claimed on such interstate purchases. The respondent, while completing the assessment, has rejected the above contention of the dealer on the ground that, no details with proof has been filed. In my considered view, if an opportunity had been granted to the dealer to produce proof, and still, they did not produce proof to establish their claim, then, the respondent would have been justified in concluding the issue. Therefore, this Court is inclined to give one more opportunity to the petitioner to produce proof to establish their claim with regard to the second issue.

3.3 Sofar as the third issue is concerned, viz., Refund of excess ITC, which has been reversed in respect of consignment transfer, the petitioner has specifically stated that, by mistake and calculation error, they have already reversed in the monthly return, a sum of Rs.5,65,391.45, and therefore, the notice issued, directing for reversal of ITC of Rs.7,55,430/-

instead of Rs.4,51,978/- is incorrect. The petitioner has requested for refund of the excess reversal of ITC of Rs.1,13,413/- (i.e., 5,65,391-4,51,978). Though such contention was raised by the petitioner with regard to consignment transfer, the respondent has failed even to endeavour into the same in the impugned order.

4. Thus, out of the three issues raised by the petitioner in this Writ Petition, this Court is inclined to interfere with issue Nos.(ii) and (iii). So far as the first issue is concerned, the petitioner has to file Appeal before the Appellate Authority.

5. For the reasons stated hereinabove, the Writ Petition is partly allowed and the finding rendered by the Authority with regard to the reversal of ITC on interstate purchases is set aside and the petitioner's claim for refund of the excess reversal of ITC to the tune of Rs.1,13,413/- has to be considered by the Assessing Officer, which has not been considered in the impugned assessment orders. Thus, on the two issues, viz., Issues (ii) and (iii) the matter is remanded to the respondent for fresh consideration. As consequence of the above direction, the penalty levied under the two heads is also set aside. With regard to the first issue, i.e., Reversal of ITC in respect of the purchases, which were made by the petitioner from the registration cancelled dealers, the petitioner is granted liberty to file Appeal before the Appellate Authority within 15 days from the date of receipt of a copy of this order. If the Appeal is filed within the said time limit, the Appellate Authority shall entertain the Appeal without rejecting it on the ground of limitation. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

sd
To
The Assistant Commissioner (CT)
Thiruvottiyur Assessment Circle,
No.791, T.H. Road, Chennai - 600 019.

+1cc to Mr.T.PRAMODKUMAR CHOPDA, Advocate, S.R.No.30518
+1cc to the Government Pleader, S.R.No. 30443

Writ Petition No.8697 of 2018

RK(CO)
TR(16/05/2018)