

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.33295 of 2017
and
W.M.P.No.36728 of 2017

M/s.Jayaam Galvanizers Private Limited
Rep by its Managing Director
Mr.Jayaram Chetty
Survey No.42/3, Ponneri Road
Madhavaram Village, Amoor Post
Ponneri Taluk - 601 204. ...Petitioner

Vs.

- 1.The Assistant Commissioner
Ponneri Assessment Circle
No.22, Cutchery Street
Ponneri-601 204.
- 2.The Additional Chief Secretary /
Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai - 600 005.
- 3.The Joint Commissioner (CT)
Chennai (North) Division
PAPJM Buildings, Grems Road
Chennai - 600 006. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the first respondent in R.C.200/2017/A1-1 (TIN No.33431704005/2011-12) dated 07.12.2017, quash the same as ultravires, arbitrary, unreasonable and without jurisdiction under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.M.Hariharan
Additional Government Pleader

O R D E R

Heard Mr.V.Sundareswaran, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing on behalf of the respondents.

2.The petitioner has impugned the notices issued by the first respondent, who is the assessing officer, dated 07.12.2017 directing the petitioner to pay a sum of Rs.14,57,173/- being the amount of Input Tax Credit (ITC) based upon the direction issued by the Commissioner of Commercial Tax in letter dated 27.10.2016.

3.It is to be seen as to why the first respondent has issued the impugned notice and whether he has power to do so. The facts disclose that the first respondent issued notice dated 20.08.2015 pointing out that on scrutiny of the records, it is noticed that the petitioner/dealer has made interstate sale of goods during the year 2011-2012 to unregistered dealer and paid tax at higher rate. However, reversal of Input Tax Credit of Rs.14,57,173/- was not made in form I returns filed by the petitioner for the interstate sale not covered by the declaration forms.

4.Therefore, there was a proposal to reverse input tax credit to the extent of Rs.14,57,173/-. The petitioner submitted their reply dated 29.06.2016 requesting that the first respondent may adjust the reversal of input tax credit of Rs.14,57,173/- against the available input tax credit, which according to the petitioner is Rs.64,32,578/-. The petitioner also enclosed a copy of the E-returns and acknowledgement along with their letter. On receipt of the petitioner letter dated 29.06.2016 and upon transfer of the documents Annexure II thereto, the first respondent passed an order dated 01.07.2016 and adjusted the input tax credit of Rs.14,57,173/- against the reversal of Input Tax dues. Having passed such an order, the first respondent has no power to revise his own order except by way of re-opening, which requires a procedure to be followed. Unfortunately, the first respondent has mechanically obeyed the direction issued by the second respondent, which resulted in the impugned notice. The first respondent having passed an order has become functus, cannot reopen the same in the manner done, that too, at the behest of the first respondent.

5. Therefore, the impugned notice in the present format is held to be without jurisdiction. Accordingly, the writ petition is allowed and the impugned notice is quashed. Consequently, connected miscellaneous petition is closed. No costs.

Assistant Registrar
Dt.15.2.18

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner
Ponneri Assessment Circle
No.22, Cutchery Street
Ponneri-601 204.
 2. The Additional Chief Secretary /
Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai - 600 005.
 3. The Joint Commissioner (CT)
Chennai (North) Division
PAPJM Buildings, Greaves Road
Chennai - 600 006.
- +1 CC to Govt. Pleader, sr.7024
- +1 cc to Mr.V.Sundareswaran, advocate, sr.7095.

Krd 17/2

W. P. No.33295 of 2017

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