

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.03.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.483 of 2018
C.M.P.No.4531 of 2018

The Commercial Tax Officer,
Gummidipoondi Assessment Circle,
38, GNT Road, Second Floor,
Gummidipoondi. Appellant

vs.

M/s.Suryadev Alloys & Power Private Limited,
represented by its Director,
Mr.Pankaj Agarwal,
Survey No.298/2, Gummidipoondi Taluk,
New Gummidipoondi 601 201. Respondent

Writ Appeal is filed under Clause 15 of Letters Patent,
against the order, dated 27.03.2015, made in W.P.No.8866 of 2005.

Prayer in W.P.8866/2015: Petition filed to issue a Writ of
certiorari to call for the records of the respondent in
TIN33921702760/2009-10 dt 16.2.2015 and quash the same

For Appellants : Mr.V.Hari Babu,
Addl. Govt. Pleader (Taxes)

JUDGMENT

(Judgment of the Court was delivered by S.MANIKUMAR, J)

Challenge in this Writ Appeal is to an order, made in
W.P.No.8866 of 2005, dated 27.03.2015, by which, writ Court
allowed the writ petition, by setting aside the assessment order
for the year 2009-10.

2. Short facts leading to filing of the appeal, are as
follows:

The respondent is a registered dealer on the file of the
appellant, under the provisions of Tamil Nadu Value Added Tax
Act, 2006 (hereinafter referred to as 'Act 2006') with TIN

No.33921702760. The respondent is a manufacturer and dealer in M.S.Billets and TMT Bars. The Officials of the Enforcement Wing inspected the place of business of the petitioner from 27.09.2013 to 04.10.2013 and noticed that they had effected purchases from registration cancelled dealers for a sum of Rs.67,39,682/- and availed ITC for Rs.2,71,657/-, during the assessment year 2009-10. Based on the report of the Enforcement Wing, the respondent was issued with a notice, dated 21.02.2014, proposing to assess the dealer and reverse the Input Tax Credit. The appellant also proposed to levy penalty, under Section 27 of the Act, 2006. The respondent submitted their objections on 28.04.2014 and requested the appellant to furnish the dealer wise purchase turnover. However, without considering the objections of the respondent/writ petitioner, the appellant has passed the impugned assessment order, confirmed the proposal, reversed the Input Tax Credit and also levied penalty. The said order was challenged by the respondent in W.P.No.8866 of 2015.

3. After considering the submissions of both sides and also the decision in Althaf Shoes (P) Ltd. v. Assistant Commissioner (CT) reported in (2012) 50 VST 179 (Mad.), vide order, dated 27.03.2015, the writ Court in W.P.No.8866 of 2015, ordered as follows:

"3. The petitioner has challenged the impugned order on the ground of violation of principles of natural justice and that the same is contrary to the law laid down by this Court in the case of Althaf Shoes (P) Ltd., Vs. Assistant Commissioner (CT) reported in (2012) 50 VST 179 (Mad). In the said decision, this Court considering somewhat an identical situation, the only difference being in the said case it was pertaining to refund and in the instant case, it pertains to Input Tax Credit, has held as follows:

"As already pointed out, the circular issued by the Commissioner clearly states that so long as the vendor is found to be a registered dealer on the files of the Revenue, the claim of the assessee for refund could not be rejected nor delayed. As already pointed out, the Revenue does not deny, as a matter of fact, that the assessee's vendors are all registered dealers on the files of the Revenue and the assessee had also given the TIN number of these vendors. When such particulars are available, it is for the Revenue to take necessary action against the vendors, who had not remitted tax collected by them to the State. Without taking recourse to that, I do not think that the Revenue could deny the claim of the assessee."

4. Learned Additional Government Pleader (Taxes) also does not dispute the legal position.

Since the impugned assessment order is only with regard to the reversal of Input Tax Credit, that too, solely based upon the verification with regard to the vendor, the same could not have been done. In the light of the decision referred supra and for all the above reasons, the petitioner is entitled to succeed and accordingly, this writ petition is allowed and the impugned order is quashed."

4. Being aggrieved by the order passed by the Writ Court, the present appeal has been filed, on the following grounds,

(i) The writ Court has erred in holding that merely because sellers TIN number had been produced, the respondent herein is entitled to claim ITC.

(ii) The respondent had claimed ITC on the export sales for the manufacture of goods. Subsequently, on verification of files, it was noticed that there was difference in the turnover reported by the respondent and its seller. In fact, some of sellers have not reported the sales turnover and not paid output tax. In view of the fact that the respondent's sellers have not paid the output tax, the respondent is not entitled to claim ITC.

(iii) The seller dealer had not only paid tax to the Government, the purchasing dealer, viz., the respondent herein had not produced documentary evidence to prove the payment of tax by the sellers, which is mandatory, as per Section 19(13) and 19(15) of the Tamil Nadu Value Added Tax Act, 2006. In view of the above, the claim of ITC by the respondent cannot be entertained.

(iv) Burden is cast on the person, who is claiming ITC under Section 17 of Act to show that the seller has paid the tax. Scheme of Tamil Nadu Value Added Tax Act, 2006, gives credit for payment of tax paid. If any dealer has not paid tax and merely issued bills, VAT chain is broken, the purchasing dealer cannot claim ITC. In the instant case, the respondent had reversed the VAT credit based on the inspection of the place of business by the Enforcement wing officers, thereby, the dealer had deliberately and willfully made false claim of purchase involved in the exports.

(v) It is the burden on the dealer to claim ITC, as contemplated under section 17 of Act and once he has failed to establish the same, the presumption is that the dealer, without purchase, but by getting invoices, bills, claimed ITC and therefore, the claim of ITC ought to have been reversed as envisaged under section 19(13) of VAT Act."

Heard the learned counsel appearing for the appellant and

perused the materials available on record.

5. In Sri Vinayaga Agencies v. The Assistant Commissioner (Ct), Chennai and another, reported in (2013) 60 VST 283 (Mad), in paragraph No.9, this Court held as follows:-

"9. 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, has 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 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 Infiniti Wholesale Ltd. v. Assistant Commissioner (CT) reported in 2015 (82) VST 457 (Mad.), this Court, after considering the decisions in Althaf Shoes (P) Ltd., 's case (cited supra) and Sri Vinayaga Agencies' case (cited supra), held as follows:

"22. In the case of Althaf Shoes [P] Ltd., vs. Assistant Commissioner [CT], Valluvarkottam Assessment Circle, Chennai-6 reported in [2012] 50 VST 179 [Mad], the petitioner was a dealer and exporter of finished leather and other products, who claimed refund of ITC under Section 18(2) of the VAT Act in respect of the exports made. Though the refund was granted, subsequently notice was issued seeking to withdraw the relief on the ground that its dealer had not reported the sales turnover and remitted tax and an order was passed, withdrawing the relief granted and levying penalty. While considering the said case, it was held that the circular issued by the Commissioner clearly states that so long as the vendor is found to be a registered dealer on the

files of the Revenue, the claim of the assessee for refund could not be rejected nor delayed. Revenue in the said case did not deny, as a matter of fact, that the assessee's vendors are all registered dealers on the files of the Revenue and the assessee had also given the TIN number of these vendors. When such particulars are available, it is for the Revenue to take necessary action against the vendors, who had not remitted tax collected by them to the State. Without taking recourse to that, the Revenue could not deny the claim of the assessee. Going by Rule 10 (2) of TN Vat Rules read along with section 19(1) of the TN Vat Act, it is clear that so long as the purchasing dealer has complied with the requirements as given under Rule 10(2), the claim of the purchasing dealer cannot, by any length of reasoning, be denied by the Revenue. The mere fact that the Revenue had not made an assessment on the assessee's vendor, per se, cannot stand in the way of the assessing officer considering the claim of the assessee under section 19 of the Tamil Nadu Value Added Tax Act. A reading of the circular issued by the Commissioner along with the provisions of the Act makes it clear that there is nothing repugnant in the said circular issued by the Commissioner as a head of the Department as regards the provisions of the Act on input-tax credit claim. Holding so, allowed the writ petition.

23. In the case of Sri Vinayaka Agencies [2013] 60 VST 283 [Mad], the petitioner was dealer in lubricants, purchasing lubricants from a registered dealer. On inspection, it was found that the vendor / dealer had not filed monthly returns nor paid tax to the Department. Though the petitioner had paid tax to the selling dealer, revision notice was issued proposing that the ITC should be reversed on the failure of the selling dealer in paying the tax. Allowing the said writ petition, it was held that at the time of filing the self-assessment return under Section 22(2), the petitioner-dealer had followed Rule 10 (2) of the Tamil Nadu Value Added Tax Rules, 2007, and therefore, could not be said to have wrongly availed of input tax credit wrongly. Section 19(1) states that input-tax credit can be claimed by a registered dealer, if he establishes that the tax due on such purchase has been paid by him in the manner prescribed and that was accepted at the time when the self-assessment was made. The pre-revision notices and the orders clearly stated that the petitioner-dealer had paid the tax to the selling dealer. If that be the case, it was held that the

petitioner's case therein squarely fell under the proviso to Section 19(1) of the Act. Further, it was another matter that the selling dealer had not paid the collected tax. The liability had to be fastened on the selling dealer and not on the petitioner-dealer which had shown proof of payment of tax on purchases made. The orders were thus set-aside.

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."

7. Both the decisions in Althaf Shoes' case (cited supra) and Infiniti Whole Ltd., 's case (cited supra), are confirmed by the Hon'ble Division Benches of this Court in Assistant Commissioner v. M/s.Althaf Shoes (P) Ltd., [W.A.Nos.1367 and 1368 of 2016, dated 10.11.2016] and Assistant Commissioner (CT), Presenting Thiruverkadu Assessment Circle, Kolathur, Chennai v. Infiniti Wholesale Ltd., reported in 2017 (99) VST 341 (MAD.) respectively. The above decisions are squarely applicable to the present case also.

8. In view of the dictum laid down by this Court, while confirming the order of the writ court, dated 27.03.2015, the present writ appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(Audit)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

skm

To

1.The Commercial Tax Officer,
Gummidipoondi Assessment Circle, 38,GNT Road, Second Floor,
Gummidipoondi.

Writ Appeal No.483 of 2018

NRI (CO)

RMP (28/03/2018)