IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/4/2018

C O R A M

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

Writ Appeal No.890 of 2018

1. Commercial Tax Officer
Tondiarpet Assessment Circle
Nos.18 & 20 Kummalamman Koil Street
Chennai 600 081.

2. The Commercial Tax Officer
Washermenpet Assessment Circle
19 & 20 Kummalamman Koil Street
Chennai 81. ... Appellants

Vs

Vipin Steel Enterprises
rep. By Its Proprietor
Mr.Kuldeep Kumar Gupta. ... Respondent

Appeal filed under Clause 15 of Letters Patent against the order passed in W.P.No.32467 of 2014, dated 11/12/2014.

Prayer in W.P.No.32467 of 2014:

Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records of the 1st respondent in TIN 33461201620/2009-10 dated 30.10.2014 and quash the same.

For appellants ... Mr.V.Haribabu
Additional Government Pleader
(Taxes)

J U D G M E N T

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

Writ Appeal is directed against the order made in W.P.No.32467 of 2014, dated 11/12/2014, by which, the writ Court, set aside the order of the Commercial Tax Officer, Washermentpet Assessment Circle, Chennai, dated 30/10/2014.

2. Short facts leading to the appeal are as follows:-

Respondent is a registered dealer in steel scrap, on the file of the first appellant, under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The respondent was finally assessed to a total and taxable turnover of Rs.5,51,95,261/-, for the year 2009 - 2010, on self-assessment basis, under Section 22 (2) of TNVAT Act, 2006.

3. Officials of the Enforcement Wing, inspected the place of business of the respondent, on 30/92010 and certain defects were pointed out. Based on the said inspection, the first appellant, issued a notice, dated 10/10/2011, proposing to revise the assessment, under Section 27 of the TNVAT Act and also proposed to levy penalty, under Section 27(3) of the Act. The respondent submitted their reply along with copies of the purchase bills of M/s.Thangam Steels. The first appellant took up the matter for verification of the genuineness of the transaction and a cross verification was done with the Commercial Tax Officer, Washermenpet Assessment Circle, who is said to have sent a reply, dated 28/10/2014, stating that the monthly returns filed by M/s.Thangam Steels, for the year 2009-10, is not available in their office and therefore, the transaction could not be verified. Based on the letter, dated 28/10/2014, sent by the Commercial Tax Officer, Washermenpet Assessment Circle, the second respondent proposed to confirm the proposal made in the notice, dated 10/10/2011.

4. Before the writ Court, the respondent has challenged the confirmation, 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 Althaf Shoes case, this Court held thus:-

> "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."

5. Following the decision stated supra, writ Court quashed the impugned order and allowed the writ petition.

6. Aggrieved against the aforesaid order, instant writ appeal is filed on the following grounds:-

(i). Writ Court, ought not to have entertained the writ petition filed by the Commercial Tax Officer, as there is a statutory remedy available, under Section 51 of the Tamil Nadu Value Added Tax Act, 2006.

(ii). Respondent herein has 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.

(iii). Writ Court has failed to consider the provisions laid under Section 17 of VAT Act, which states that burden of proof is always on the dealer, who claims the input tax Credit, as against the fact of earlier sufferance of tax by the other end.

7. Heard Mr.V.Haribabu, learned Additional Government Pleader for the appellants and gone through the materials available on record.

8. Issue is covered in the decision, Assistant Commissioner (CT), presently Thiruverkadu Assessment Circle, Kolathur, Chennai Vs. Infiniti Wholesale Ltd {Formerly known as Woolworths Wholesale (India) Pvt Ltd.}, reported in {2017 (99) VST 341 (Mad)}, and the relevant portion is extracted hereunder:-

> "To say the least, the show-cause notice issued by the assessing officer proposing to reverse the I.T.C availed of by the respondent/writ petitioner/dealer is lacking any valid or sustainable basis. If the sales effected to the writ petitioner/dealer are not disclosed by such a seller either in the form of return filed monthly or the tax collected from the writ petitioner/dealer is not made over to the Department by such seller, the action lies against such a defaulting seller but not against the purchaser. Obviously, the error, if any is not attributable to the writ petitioner/dealer in

claiming ITC based upon the invoice generated by its seller, but it is liable against the so-called seller. Instead of trying to cross verify the I.T.C availed of by the petitioner with specific reference to each one component, action is directed by the assessing officer against the writ petitioner/dealer. In our opinion, the learned single Judge (Infiniti Wholesale Limited Vs. Assistant Commissioner (CT) {2015 (82) VST 457 (Mad)} rightly interfered with, in exercising jurisdiction by setting aside the order of the assessing officeer which is prima facie against the principle of law.

For all these reasons, we find no merit in the writ appeal and accordingly, it stands dismissed but however without costs."

9. Following the aforesaid decision, instant writ appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mvs.
To

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Nos.18 & 20 Kummalamman Koil Street
Chennai 600 081.

2. The Commercial Tax Officer
Washermenpet Assessment Circle
19 & 20 Kummalamman Koil Street
Chennai 81.

+1cc to the Special Government Pleader (Taxes) S.R No.29688

W.A.No.890 of 2018

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