IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.7230 of 2013 and M.P.No.1 of 2013

Reliable Minerals and Metals Pvt. Ltd.,
Rep. by its Managing Director,
H.Satty Narayan,
20/1, E.K.Agraharam Street, Chennai-3.
... Petitioner

-vs-

Assistant Commissioner (CT),
Moore Market (South) Assessment Circle,
Chennai-01. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the respondent in TIN No.33960361325/2010-11 dated 28.12.2012 and to quash the same.

For Petitioner : S.Raveekumar

For Respondent : Mrs.G.Dhanamadhri,
Government Advocate (Taxes)

O R D E R

Heard Mr.S.Raveekumar, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate (Taxes) for the respondent.

2. The petitioner has impugned an order of assessment dated 28.12.2012 for the assessment year 2010-11 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act").

3. Two issues arise for consideration, viz., whether the reversal of input credit availed by the petitioner on the alleged ground of effecting purchases from registration cancelled dealers is correct; and whether the turnover assessed at higher rate of tax for non-production of C Form Declarations is correct.

4. So far as the second issue is concerned, the petitioner had approached the Assessing Officer and produced additional C Form Declarations for four assessment years, viz., 2008-09 to 2011-12 that includes the present assessment as well. However, it appears that the respondent did not accept the C Form Declarations and therefore, the petitioner has approached this Court and filed Writ Petition Nos.16924 to 16927 of 2016. The said writ petitions were disposed of by common order dated 29.04.2016 by directing the respondent / Assessing Officer to consider the C Forms filed by the petitioner and pass assessment orders under the Central Sales Tax Act, 1956 and revised assessment orders under the TNVAT Act, after affording an opportunity of personal hearing.

5. Learned counsel for the petitioner submits that though the forms have been submitted, till date, the respondent is yet to pass revised orders. Therefore, the second issue, having already been dealt with in the earlier writ petitions and directions issued, need not be taken up for consideration in this writ petition.

6. With regard to the first issue, the respondent himself had accepted in the counter affidavit that the registration certificates of the selling dealers were cancelled retrospectively. This averment is contained in paragraph 8 of the counter affidavit. If such is the position, the reversal of input tax credit availed by the petitioner, on the ground that the selling dealers' registration certificates have been cancelled retrospectively, is not sustainable. In this regard, it is beneficial to refer to the decision of this Court in the case of Jinasasan Distributor vs. Commercial Tax Officer reported in (2013) 59 VST 256 (Madras). Therefore, the impugned order, directing reversal of input tax credit on the ground that the selling dealers' registration certificates were cancelled retrospectively, is liable to be set aside. Furthermore, no details have been furnished in spite the petitioner having sought for the same vide representation dated 12.12.2012.

7. Thus, for the above reasons, this writ petition is allowed, the impugned order, insofar as it proposes to reverse the input tax credit on the ground that the selling dealers' registration certificates have been cancelled retrospectively, is set aside.

8. With regard to other issue pertaining to the Form C Declarations, since already orders have been passed in

W.P.Nos.16924 to 16927 of 2016, dated 29.04.2016, no further orders are required and the respondent is directed to comply with the directions issued in the said order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//
Sub Assistant Registrar

To

Assistant Commissioner (CT),
Moore Market (South) Assessment Circle,
Chennai-01.

+1cc to Mr.S.Ravee Kumar, Advocate, S.R.No.39351

+1cc to the Special Government Pleader, S.R.No.39691

W.P.No.7230 of 2013

GSP(03/07/2018)