IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.Nos.12340 & 12341 of 2008
and
M.P.Nos.1 & 1 of 2008

M/s.New Balaji Steels.,
Rep.by its Proprietorix - Mrs.P.Muthumani
Srinivasapuram Main Road,
Avinashi - 641 654.
Coimbatore. ... Petitioner in both W.Ps

Vs.

The Commercial Tax Officer,
Avinashi Assessment Circle,
Avinashi, Coimbatore. ... Respondent in both W.Ps

Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent in TNGST No.33682082453/06-07 and TNGST No.33682082453/07-08 dated 30.04.08 and quash the same.

For Petitioner in both W.Ps : M/s.R.Hemalatha

For Respondent in both W.Ps : Mr.V.Haribabu Special Government Pleader (Tax)

COMMON ORDER

These Writ Petitions have been filed to call for the records of the respondent in TNGST No.33682082453/06-07 and TNGST No.33682082453/07-08 dated 30.04.08 and to quash the same.

2. The petitioner is a proprietorship firm, namely, M/s.New Balaji Steels, represented by its Proprietorix, Mrs.P.Muthumani, and are assesses on the files of the respondent herein bearing Registration under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'VAT Act' in short) in TIN No.33682082453.

3. The petitioner would contend that they are the dealers engaged in the manufacture of Iron and Steel inside the State of Tamil Nadu and for the purpose of same, they purchase Iron and Steel ingots or sheets etc., from the other dealers. The introduction of the VAT Act in the midstream i.e from 01.01.2007, brought forth the concept of Input Tax Credit (hereinafter referred to as 'ITC' in short) on the tax paid against the output tax payable on further sales. The tax paid at the time of purchase of goods is eligible for setoff or credit on the tax payable on the further sales inside the State.

4. The petitioner would further contend that during the assessment year 2006-2007 (period from 01.01.2007 to 31.03.2007) and 2007-2008 (period from 01.04.2007 to 31.03.2008) purchase of Iron and Steel goods were made from two dealers in Chennai, namely., (i) M/s.S.B.Traders (TIN No.33721102537) for a turnover of Rs.49,50,876/- and M/s.Thirupathi Enterprises (TIN No.33221102618) for a turnover of Rs.21,78,935/- respectively. On the above purchases, the petitioner firm claimed ITC to an extent of Rs.1,98,032/- and Rs.87,156/- respectively. The said claim of ITC was duly made in accordance with Section 19(10)(a) of the VAT Act, 2006, which provides that the claim of ITC shall be made only on receipt of the Original Tax Invoice from the selling dealer. Section 19(10)(a) is extracted hereunder:

> "Section 19(10)(a): The registered dealer shall not claim input tax credit until the dealer receives an original tax invoice duly filled, signed and issued by a registered dealer from whom the goods are purchased, containing such particulars, as may be prescribed, of the sale evidencing the amount of input tax.

5. It is further contended by the petitioner that only on receipt of the Original tax invoice from the selling dealer that clearly showed the VAT tax paid by the petitioner was the claim of ITC made. Hence, there had been due compliance of the provisions of Section 19(10)(a) of the Act. The respondent herein had issued notice dated 12.03.2008 proposing to reverse the claim of ITC made in respect of the purchases made from both the above said dealers on the premise that verification of the sale details of the Chennai dealer through the website revealed that the selling dealers in Chennai had not reported the alleged turnover in their respective monthly returns nor have they paid the taxes thereon.

6. The petitioner would also contend that by letter dated 20.03.2008 and 22.03.2008, the petitioner had replied that mere website verification would not be proper and enquiry should be made on the sellers whose registration certificates the petitioner had furnished. In the meanwhile, the petitioner

sought time to furnish details. On receipt of the reply dated 22.03.2008, the respondent herein, had addressed a cross check reference to the Commercial Tax Officer, Thiruvottiyur Assessment Circle, Chennai and had obtained a report from the said assessing authority that M/s.S.B.Traders had reported NIL return for the months of January 2007, March 2007, May 2007 and June 2007. On receipt of the said report from the Commercial Tax Officer, Thiruvottiyur Assessment Circle, the respondent herein issued a Single Consolidated Notice in TNGST No.33682082453/06-07/07-08 dated 15.04.2008 stating that the cross check reference with the concerned assessing authority of the sellers revealed that the said seller had not reported their sales turnover or paid taxes thereon, hence, in accordance with Section 17 of the VAT Act, the burden of proving the tax sufferance lies on the petitioner and hence, the respondent had proposed to reverse the ITC under Section 27(2) for the months of January 2007 - March 2007 (TNGST 2006-07) and April 2007 to June 2007 (TNGST 2007-08). The respondent has passed an impugned order dated 30.04.2008 separately for the two periods which are coming under the purview of the assessment year 2007-08.

7. The petitioner would further contend that the impugned orders of assessment are contrary to the Circular issued by the Commissioner of Commercial Taxes, Chennai in Circular VAT Cell No.26401/07 - Circular No.20/2007 dated 23.11.2007, wherein, the Commissioner being the highest authority has instructed all the assessing authorities that for the period from January 2007 to March 2007, the returns filed by the dealers ought to be accepted as such without rejection in compliance with Section 22 of the Act and the scope of revision is always available for the assessing authority if he feels that the return filed is incomplete and incorrect.

8. It is further contended by the petitioner that there cannot be a consolidated single notice for two assessment years as made by the respondent and further, the reason given by the respondent to reverse the genuine claim of ITC is not supported by the provisions of the Act. The petitioner also would contend that the failure on the part of the seller to report the said sale transaction in their monthly return, the same is being fastened on the petitioner. When this being the case, Section 27 (4) cannot be made applicable as it is not a case of wrong availment or fraudulent availment.

9. The petitioner would further contend that Section 17(2) should not be interpreted or read in the manner as put forth by the respondent, but, the same should be read conjointly with Section 19(10)(a) which prescribes the manner in which the claim of ITC should be made. Thus, a harmonious construction of both the provisions would reveal that a registered dealer can claim

Input Tax Credit only on receipt of the Original Tax Invoice issued by another registered dealer containing all particulars duly filled in the manner prescribed by Law. When claim is made after following the law, it is deemed to be a complete and full discharge of the burden placed on him for making such a claim. That apart, the petitioner would contend that it is not the case of the revenue that the petitioner's dealers are unregistered or bogus dealers who have never effected such sales to them. Only on rendering of any positive finding with regard to the status of their selling dealer, the claim of ITC made by them can arise. Further, the purchases made from the above said two dealers within the framework of law on the issuance of Original Tax Invoice, which clearly shows the VAT tax payable at the rate of 4% and the movement of goods had also been showed through the concerned Lorry Registration Numbers. Hence, the act of the respondent is highly condemnable.

10. The petitioner would also contend that ITC is a credit that is statutorily provided under the statute and the system of taxation under VAT solely stands on the availment of ITC. The VAT system of taxation provides for availment of ITC to prevent the cascading effect of tax on the ultimate consumer, when the same ITC is prevented from being availed, it indirectly contributes to spiraling price rise and increase.

11. The respondent has passed the impugned orders in TNGST No.33682082453/06-07 and TNGST No.33682082453/07-08 dated 30.04.2008, wherein, the petitioner was levied ITC claim of Rs.80,000/- and penalty of Rs.40,000/- and ITC claim of Rs.1,18,036/- and penalty of Rs.59,018/-. Hence, the petitioner has filed these Writ Petitions seeking to quash the said orders dated 30.04.2008.

12. Heard both sides and perused the materials available on record.

13. The learned counsel for the petitioner produced a Judgment of the Hon'ble Division Bench of this Court in W.P.No.890 of 2018 dated 19.04.2018, wherein, similar issue has been raised. The said appeal has been filed by the Commercial Tax Officers on the grounds that (i) Statutory remedy is available under Section 51 of the TNVAT Act, (ii) the respondent dealer had not produced any 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) As per Section 17(2) of TNVAT Act, the burden of proof is always on the dealer, who claims the input tax credit.

In the said Judgment, the Hon'ble Division Bench has observed as follows:-

"8. The issue on hand is covered in the decision, namely, the 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, rightly interfered with, in exercising jurisdiction by setting aside the order of the assessing officer 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"

14. The stand of the Assessing Officer/Commercial Tax Officer that in order to claim input tax credit, the petitioner dealer should establish that the tax due on such purchase has been paid in the manner prescribed and since the petitioner, as a dealer, had failed to prove that the input tax credit of purchase from the selling dealer was paid by the selling dealer, the petitioner is entitled to pay tax cannot be accepted.

15. As per Section 15 and 16 of the TNVAT Act, the input tax credit availed by the selling dealer shall be only provisional and the assessing authority is empowered to revoke the same, if it appears to the assessing authority, to be incorrect. Hence,

it would be proper on the part of the respondent to proceed against the selling dealer for recovery of tax in the manner known to law. The respondent's action against the petitioner, namely, the reversal of input tax credit, is not correct.

16. In view of the above said decision and also the facts and circumstances of this case, the respondent's stand cannot be accepted and this Court is inclined to pass an order in favour of the petitioner herein and accordingly, the impugned orders of the respondent in TNGST No.33682082453/06-07 and TNGST No.33682082453/07-08 dated 30.04.08 are hereby quashed and the Writ Petitions are allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

raja

To

The Commercial Tax Officer,
Avinashi Assessment Circle,
Avinashi, Coimbatore.

W.P.Nos.12340 & 12341 of 2008
and
M.P.Nos.1 & 1 of 2008

(CS-IX)
EU(29/10/2018)