IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.31003 of 2018
and
WMP Nos.36154 of 2018

MAA Agencies,
(Rep. by its Proprietor)
Vallimeena
82/86, T.P.Koil Street,
Triplicane,
Chennai 600 005. ... Petitioner

vs.

The State Tax Officer,
Thiruvallikeni Assessment Circle,
46, Greenways Road,
Chennai 600 028. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of certiorari to call for the records on the file of the respondent herein in TIN 33410742595/2011-12 dated 23.10.2018 quashing the same.

For Petitioner : Mr.K.A.Parthasarathy
For Respondent : Mr.M.Hariharan
Additional Government Pleader

O R D E R

The petitioner is aggrieved against the order of assessment passed in respect of the assessment year 2011-12 dated 23.10.2018. The Assessing Officer has passed the assessment order and reversed the total ITC and also imposed penalty only on the reason that the petitioner has effected purchases from the registration cancelled dealers.

2. The contention of the petitioner before this Court is that such cancellation of registration was made with retrospective effect and therefore, based on such retrospective cancellation of registration, the Assessing Officer is not entitled to reverse the ITC.

3. The issue as to whether the Assessing Officer is entitled to pass orders of assessment in respect of purchases made by the assessee from the dealer, whose registration was cancelled retrospectively, has been considered by this Court in very many cases and found that when the other end dealer was having valid registration on the date of transaction, such retrospective cancellation made later, cannot be a reason for making the assessment by reversing ITC against the assessee. One such order was passed by this Court in W.P.No.29259 of 2011 dated 02.11.2018, wherein at paragraphs 3, 4 and 5, it is held as follows:

> "3. The issue as to whether the Assessing Authority relying on the cancellation of the registration certificate retrospectively is justified for imposing tax and penalty has already been considered by this Court in favour of the assessee and one such order was passed in W.P.No.6993 of 2017 dated 22.03.2017, wherein it is held as follows:
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> > "3. Since the issue involved in this writ petition is similar to one decided in a case reported in (2013) 59 VST 256 (Mad) Jinsasan Distributors v. Commercial Tax Officer (CT), Chintaripet Assessment Circle, Chennai, affirmed by the Divisional Bench of this Court reported in (2016) 96 VST 315 (Mad) Assistant Commissioner (CT), Broadway Assessment Circle, Chennai v. Bhairav Trading Company, it is represented by the learned counsel appearing for both sides that the Input Tax Credit cannot be denied to the Assessee, only on the ground that the registration certificate of the dealers was cancelled with retrospective effect.
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> > 4. Considering the fact that the issue involved herein is already decided in favour of the petitioner and considering the fact that the impugned order of assessment has been passed only for the reason that the purchase from the dealers whose registration was cancelled later with the retrospective effect, I am of the view that the petitioner is entitled to succeed by applying the above decision of this Court, in (2013) 59 VST 256 (Mad) Jinsasan Distributors v. Commercial Tax Officer (CT), Chintaripet Assessment Circle, Chennai and (2016) 96 VST 315 (Mad) Assistant Commissioner (CT), Broadway Assessment Circle, Chennai v. Bhairav Trading Company.
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> > Accordingly, this writ petition is allowed and the impugned order is set aside.

4. The said order was followed by this Court in very many cases, out of which, one order in W.P.No.7361 of 2017 dated 08.06.2017.

5. Considering the above stated facts and circumstances and the considering the particular fact that on the date of the transaction, the other end dealer was having the registration in force and that such registration was cancelled only retrospectively, I am of the view that the petitioner is also entitled to the benefit of the order passed in the above cases, as the issue is squarely covered in favour of the petitioner. Accordingly, the Writ Petition is allowed and the impugned order is set aside. No costs. Consequently, the connected miscellaneous petition is closed."

4. Learned Additional Government Pleader appearing for the respondents fairly submitted that the cancellation of Registration of the other end dealers was with retrospective effect and therefore, on the date of purchase, those dealers were having valid registration. When such being the factual position and in view of the order already passed by this Court in similar cases, the writ petition is allowed and the impugned order is set aside. No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

The State Tax Officer,
Thiruvallikeni Assessment Circle,
46, Greenways Road,
Chennai 600 028.

+1 cc to M/s.N.Inbarajan, Advocate, SR No.83278

+1 cc to the Spl. Government Pleader(Taxes), SR No.83681

W.P.No.31003 of 2018

SV(CO)
ssm(19/12/18)