BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.7898 of 2017
and
W.M.P(MD)No.6123 of 2017

Tvl.Sukra Bags & Belts,
represented by its Proprietor,
N.Suganthi,
aged about 45 years,
W/o.Nallathambi,
289-13 St. Mary's Complex,
Main Road,
Dindigul. ...Petitioner

Vs

1.The Appellate Deputy Commissioner (CT)
Madurai (North),
Commercial Taxes Buildings,
Dr.Thangaraj Salai,
Madurai-625 020.

2.The Commercial Tax Officer-II,
Dindigul. ...Respondents

PRAYER: Writ Petition is filed, under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mangamus, to call for the records pertaining to the impugned proceedings of the 1st respondent in Na.Ka.No.157/2017/A, dated 20.03.2017 and to quash the same as the same is passed against law and by grossly violating the principles of natural justice and consequently direct the 1st respondent to admit the appeal filed by the petitioner u/s 51 of the TNVAT Act against the order passed by the 2nd Respondent in TIN No.33175221702/2013-14, dated 01.03.2016 and to consider the same in view of the judgment of the Honourable Supreme Court in the case of State of Maharashtra Vs.Suresh Trading Company reported in 109 STC 439 and the Honourable Madras High Court in the case of M/s.Jinsasan Distributors Vs.Commercial Tax Officer (CT) Chintaripet Asst.Circle reported in 59 VST 256 and pass such futher or other orders.

For Petitioner : Mr.R.Narayanan
For Respondents : Mr.K.Mu.Muthu,
Additional Government Pleader

ORDER

The petitioner is an assessee registered with the second respondent. The petitioner was visited with the order, dated 01.03.2016 for the year 2013-2014 reversing the ITC already availed by the writ petitioner. The ground on which the reversal was made was that the writ petitioner had purchased from the dealer whose R.C., was cancelled. It is seen that the cancellation of the R.C., of the selling dealer was done with retrospective effect. When the writ petitioner made his purchase, the R.C., of the selling dealers was in currency. Questioning the Order, dated 01.03.2016 the writ petitioner filed an appeal before the first respondent. But then there was a delay of 239 days.

2..The case of the writ petitioner is that he was never served with the order, dated 01.03.2016. According to the writ petitioner, he obtained an authenticated copy of the said order only through Right To Information Act, but then the appellate authority took the stand that the appeal was filed out of time and returned the appeal papers. Challenging the same, this writ petition has been filed.

3.What the writ petitioner wants is that the appeal should be taken on file and decided on merits. This Court finds that the writ petitioner obtained an authenticated copy of the order, dated 01.03.2016 only through the Right To Information Act. But what impressed this Court more was that the ground on which the ITC was reversed is impermissible in law. In Infiniti Wholesale Limited vs. The Assistant Commissioner (CT) in W.P.No.9263 of 2013, a learned Judge of this Court by order, dated 6.11.2014 held as follows:-

> “24...... 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.”

4.The Hon'ble Division Bench of the Madras High Court has approved this decision in number of cases in W.A.No.1464 of 2016, dated 07.12.2016 The Assistant Commissioner (CT) vs. Sri Vinayaga Agencies.

5.Since the order passed against the writ petitioner by the second respondent appears to be contrary to the decision of this Court, interest of justice require that the appellate authority entertain the appeal and disposes of the same in accordance with law as per the dictum laid down by the Madras High Court in Infiniti Wholesale Limited case, the writ petition is allowed.

6.The Registry is directed to return the original appeal papers to the petitioner so that he can represent the same to the appellate Court.

7.The writ petitioner undertakes that he would re-present the appeal papers within two weeks from the date of receipt of a copy of this order. On such re-presentation of the appeal, the appellate authority shall entertain the same and dispose the same in accordance with law, as per the decision rendered in Infiniti Wholesale Limited case. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-III)

To
1.The Appellate Deputy Commissioner (CT)
Madurai (North),
Commercial Taxes Buildings,
Dr.Thangaraj Salai,
Madurai-625 020.

2.The Commercial Tax Officer-II,
Dindigul.

+1cc to Mr.R.Narayanan,Advocate SR No.98726
+1cc to Special Government Pleader,SR No.98937

W.P(MD)No.7898 of 2017
05.12.2018

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