IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.3680 & 3683 of 2019
and
WMP.Nos. 4046, 4047,
44051 and 4054 of 2019

M/s. Chakaravarthy Readymades,
Represented by its Proprietor-A.J.Isaac,
No.11-A, Bazaar Street,
Vandavasi,
Tiruvannamalai District. ... Petitioner in the both W.Ps

Vs

The State Tax Officer,
Vandavasi,
Tiruvannamalai District. ... Respondent in the both W.Ps

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari or any other appropriate writ, order or direction in the nature of a Writ, calling for the records on the file of the respondent in his impugned proceedings made in TIN:33524601146/2013-14, 2014-15 dated 31.12.2018 quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr. S. Rajasekar
For Respondent : Mr. M. Hariharan,
Additional Government Pleader



COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader takes notice for the respondent. At request and by consent of both sides, the Writ Petitions are taken up for final disposal at the stage of admission.

2. Heard Mr. S. Rajasekar, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing for the Commercial Tax Department.

3. The challenge in these writ petitions is to the proceedings of the State Tax Officer, Vandavasi, Tiruvannamali District dated 31.12.2018 in relation to the period 2013-14. The Input Tax Credit (ITC) claimed by the assessee has been reversed by the Assessing Officer on the basis of an Annual Scrutiny Website Report issued by the Assistant Commissioner (ST/Audit/Tiruvannamalai) that reveals that the sellers have not reported the corresponding purchases in their returns filed for the period in question. Accordingly, the Assessing Authority brought the difference in purchase turnover to tax and reversed the claim of ITC by the petitioner in this regard.

4. The provisions of section 19(10)(a) of the Tamil Nadu Value Added Tax Act, 2006 ( in short the 'Act') read as under:

> " 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. The statutory requirement for claim of ITC is production of proof of purchases by way of original invoices from the selling dealer. In the present case, Mr.Hariharan, learned counsel for the Department, does not dispute the position that the purchasers have duly produced the original invoices from the seller.

6. In such a circumstance, no reversal is liable to be made, in the absence of any further condition imposed upon the dealer in this regard.

7. A learned Single Judge of this Court in the case of JKM Graphics Solutions Private Limited Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai, [2017] 99 VST (Mad), has considered an identical challenge raised by several dealers, wherein their claim for Input Tax Credit was reversed on an alleged mis-match between their returns and the returns filed by the sellers. In conclusion, the Writ Petitions were allowed in the following terms:

> Admittedly, in the instant case, there is no challenge to the statutory provisions and the complaint of all the dealer is largely

on the procedure adopted by the respective assessing officers. The principal Secretary and Commissioner of Commercial Taxes was conscious of the problems faced by the dealers as complaints were received which had lead to issuance of a circular as early as on April 1, 2015. The directions contained in the said circular are very pointed direction, but it is sad to note that the circular remains only on paper and seldom assessing officers follow the circular resulting in several assessments being set aside by the court and remanded for denova consideration. Thus, this court is fully convinced that the procedure adopted by the respondents, assessing officers in all these cases are half baked attempts, which have not yielded results and these cases are before this court or before the appellate authorities and all that the assessing officers can record is that they have issued show-cause notices or passed orders reversing the input-tax credit with no appreciable impact on the revenue collection.

The procedure adopted under the Maharashtra VAT Act appears to be a more reasonable procedure, the Rules have been so designed to constitute independent authorities, who will in exercise jurisdiction to dispose of the objections, etc. However, this court cannot legislate nor direct the State to legislate in a particular passion and it is for the state to bring about and appropriate rules and set procedures so that when discrepancy is noted while comparing the return with that of the figures available with the Department in their web portal, there should be an exercise carried out by the Department within its level before calling upon the dealer to show cause. This can be achieved only if there is a centralised mechanism and if the present practice is allowed to prevail, it would only result in multiplicity of proceedings with more number of cases pending before the courts and appellate forums, thus jeopardizing the interest of revenue.

Therefore, it is high time the Principal Secretary and Commissioner of Commercial Taxes in consultation with him officers lays out a detailed procedure as to how to take forward cases of mismatch, evolve a central mechanism, which can go into these aspect and furnish details in full form to the respective assessing officers, who can decide for themselves as to whether there is a case made out to call to call upon their dealer to explain. If this centralized mechanism is not put in place exclusively for such purpose, it would result in notices and orders being issued by the respective assessing officers without even the knowledge of the assessing officers of the other end dealer resultantly no action being taken against other end dealer, assuming, he is at fault. Therefore, it is high time the Department wakes up and stops the one way approach and examine the matter in a holistic manner so that the defaulting dealer is brought to books.

Hence, for all the above reasons, all the writ petitions are allowed and the notices/orders either original or appellate or revisional are set aside and the matters are remanded to the respective assessing officers, to undertake a fresh exercise by conducting a thorough enquiry in consultation with the assessing officers of the other end dealer for which purpose the Commissioner of Commercial Taxes shall empower the assessing officers to seek information from other circles as well and in the mean time to evolve a centralized mechanism to exclusively deal with the cases of mismatch and while doing so, the Principal Commissioner shall take note of the procedures adopted by the other States, more particularly, in Maharashtra, Gujarat and Delhi and if any statutory amendments have to be made, make appropriate recommendations to the State Government, and till then to devise a procedure which is fair and reasonable and afford an opportunity to the dealer to put forth his case and establish that he is entitled to the concession/set-off availed.

Since these writ petitions have been allowed and the impugned orders have been set aside and the matters have been remanded for fresh consideration the petitioners/dealers are not entitled to raise a plea of limitation, when fresh show cause notices are issued and they are directed to submit their explanation to enable the assessing officers to adjudicate their case.

8. In the light of the above, this Writ Petition is allowed and the impugned order of assessment is set aside. The assessment will be re-done as indicated in the order in the case of JKM Graphics (supra) pursuant to fresh show case notice to be issued by the Assessing Authority. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrn

To

The State Tax Officer,
Vandavasi,
Tiruvannamalai District.

+2 ccs to M/s.Hemalatha, Advocate Sr.No.12131
+1 cc to The Special Government Pleader, (Taxes), Sr.No.12350

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MG(CO)
CSL/05.03.2019