IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.Nos.4026 to 4028 of 2013
and M.P.Nos.1, 1 and 1 of 2013

M/s.Lafarage Aggregates and Concrete
India Private Limited,
Represented by Mr.Binoy Misra,
Vice President (Finance)
142, Palavakkam Village,
Developed Plot,
Industrial estate, Perungudi,
Chennai 96. ... Petitioner in all W.Ps

Vs

The Assistant Commissioner (CT)
Thiruvanmiyur Assessment Circle,
Besant Nagar, Chennai - 90. ... Respondent in all W.Ps

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN.33350925958/2008-09, 33350925958/2009-10 and 33350925958/2010-11, dated 20.12.2012 and quash the same as being violative of the principles of natural justice, contrary to the provisions of the Act and Rules and also the decision of the Madras High Court reported in (2012) VST 179 (Althaf Shoes (P) Ltd., Vs Assistant Commissioner (CT), Valluvarkotttam assessment circle, Chennai), and hence without jurisdiction, invalid and illegal.

For Petitioner in all W.Ps : Mr.C.Venkatraman

For Respondent in all W.Ps : Mrs.Mohamed Shaffiq Special Government Pleader

COMMON ORDER

Though the petitioner herein had raised several grounds challenging the assessment orders, the main contention put forth by the learned counsel for the petitioner before this Court is that the petitioner was not liable for non payment of the taxes by the selling dealer. For which contention, the learned counsel for the petitioner relied upon the proviso to Section 19 (1) and 19 (16) as well as the decision of this Court in the case of Sri Vinayaga Agencies Vs. Assistant Commissioner (CT) and Ors. in W.P.Nos.2036 to 2038 of 2013, dated 29.01.2013.

2. It is not in dispute that in the present case, the petitioner has been made liable for the non-payment of taxes by the selling dealer. The ground raised by the respondent in the impugned order is that since some of the suppliers of the petitioner have not paid the due to be taxed under the Tamil Nadu Value Added Tax, the dealers are liable to pay the taxes as claimed in the impugned order. Consequently, the Input Tax Credit (ITC) availed was revised and the petitioner was called upon to pay the tax dues along with penalty.

3. While dealing with the scope of Sections 19 (1) and 19 (16) of the Act in the aforesaid decisions made in the case of Sri Vinayaga Agencies Vs. Assistant Commissioner (CT) (cited supra), this Court had held that the provisions of the Act does not empower the authorities to revoke the input tax credit availed of on a plea that the selling dealer has not paid the tax. The relevant portion of the said decision reads as follows:

> 6. This Court is not inclined to accept any of the contentions raised in the impugned proceedings or the plea taken by th learned Government Advocate for the respondents, as the orders, on the face of record, appear to be totally irrational, arbitrary and capricious. Sub-sections (1) and (16) of Section 19, which have been relied upon by the authority, read as follow:
>
> 19. (1) There shall input-tax credit of the amount of tax paid or payable under this Act by the registered dealer to the seller on his purchases of taxable goods specified in the First Schedule:
>
> Provided that the registered dealer, who claims input-tax credit, shall establish that the tax due on such purchase has been paid by him in the manner prescribed.
>
> ...
>
> (16) The input tax credit availed by any registered 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, incomplete or otherwise not in order.

7. At the time of filing the self-assessment return under Section 22(2), the petitioner has followed the relevant rule, viz., rule 10 (2) of the Tamil Nadu Value Added Tax Rules and the said rule reads as follows:

> 10.(2) Every registered dealer who claims input tax credit under sub-section (1) of Section 19 shall, produce the original tax invoice, in support of his claim of the input tax credit, containing the following details, namely:-
>
> (a) A consecutive serial number;
> (b) The date on which the invoice is issued
> (c) The name, address and the taxpayer identification number of the seller;
> (d) The name, address and the taxpayer identification number of the buyer;
> (e) The description of the goods;
> (f) The quantity or volume of the goods;
> (g) The value of the goods;
> (h) The rate and amount of tax charged; and
> (i) The total value of the goods.

8. Therefore, it cannot be said that input-tax credit was wrongly availed.

9. The provision of Section 19 (1) clearly states that input-tax credit can be claimed by the registered dealer, provided if the registered dealer establishes that the tax due on such purchase has been paid by him in the manner prescribed. The pre-revision notices and the orders clearly state in paragraph 3 that the petitioner herein had paid the tax to the selling dealer. If that be that case, the petitioner's case squarely falls under the proviso to Section 19(1) of the TNVAT Act. That is availed of only by following rule 10 (2). It is also not in dispute that the self-assessment has been made under Section 22 (2) of the TNVAT Act and therefore the petitioner was justified in claiming the input-tax credit.

10. It is another matter that the selling dealer has not pad the collected tax and that liability has to be fastened on the selling dealer. It cannot be mulcted on the petitioner-purchasing dealer, which had shown proof of payment of tax on purchases made.

11. Sub-section (16) of Section 19 states that the input tax credit availed of is provisional. It, however, does not empower the authority to revoke the input-tax credit

availed of on a plea that the selling dealer has not paid the tax. It only relates to incorrect, incomplete or improper claim of input-tax credit by the dealer. It is not so in these cases. In the present case, the petitioner-dealer, admittedly, had paid the tax to the selling dealer and claimed input-tax credit and that was accepted at the time when the self-assessment was made. Even the pre-revision notices and the orders under challenge fairly state that the petitioner -dealer had paid tax to the dealer. It is, therefore, for the Department to proceed against the selling dealer for recovery of tax in the manner known to law. The provision under which the present action has been initiated, namely, invoking sub-section (16) of Section 19, does not appear to be correct on the admitted facts as above. All the revision orders revising the input-tax credit on the admitted case of tax having been paid to the selling dealer, therefore, are found to be totally incorrect, erroneous and contrary to the provisions of the TNVAT Act and Rules. As a result, all the orders are liable to be set aside. For all the above reasons, the impugned orders are set aside and the writ petitions are allowed. Consequently, M.P.Nos.1 of 2013 are closed. No costs.

4. The observation made by this Court is self explanatory to the extent that the authorities may not be justified in revoking the input tax credit availed by the buying dealer, on the ground that the selling dealer has not paid the tax.

5. The learned Special Government Pleader on the other hand would submit that the issue as to whether non payment of the tax by selling dealer are bonafide or not, requires to be examined and that this Court has for which purposes, proposed a mechanism to examine the genuineness of the said clients.

6. The learned counsel for the petitioner would submit that, in the instant case, the petitioner cannot be made liable for the non payment of tax by the selling dealers.

7. In my view, such a decision as to the genuinity of the transaction could be re-examined by the respondent herein after giving due opportunity to the petitioner. Nevertheless, since the petitioner has prima facie established its case, it is appropriate to set aside the reassessment orders and remit the matter back to the respondents for a fresh consideration.

8. In the light of the above observations, the reassessment orders in TIN.33350925958/2008-09, 33350925958/2009-10 and 33350925958/2010-11, dated 20.12.2012 are set aside and the

matter is remitted back to the respondent for fresh consideration. The petitioner is granted liberty to give his fresh objections during the course of such consideration. Such an exercise of reconsidering the issue shall be done as expeditiously as possible, in any event, within a period of three months from the date of receipt of a copy of this order.

9. With the above observations, the writ petitions stand disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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To
1. The Assistant Commissioner (CT)
Thiruvanmiyur Assessment Circle,
Besant Nagar, Chennai - 90.

2.The Section officer
ER Section, High Court, Madras 104.
+1 CC to Mr.V. Srikanth, Advocate sr 50831.
+1 CC to Spl. Govt. Pleader(T) sr 51333

W.P.Nos.4026 to 4028 of 2013
and M.P.Nos.1, 1 and 1 of 2013

AD(CO)
SP(24/07/2019)