

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.9598 of 2014
and
M.P.No.1 of 2014

Sri Senthil Agencies,
Represented by its Proprietor,
J.Senthil Prasad,
No.19, Appu Chetty Street,
Shevapet, Salem-2. ... Petitioner

Vs.

The Assistant Commissioner (CT) (FAC),
Shevapet Circle,
Salem. ... Respondent

Prayer: Writ Petition is filed under article 226 of the Constitution of India, to issue writ of Certiorarified Mandamus, calling for the records on the files of the respondent in TIN.No.33832641915/2007-08 dated 23.01.2014 and quash the same as being contrary to the principle of natural justice and further direct the respondent to pass order afresh after furnishing the copies of records as requested by the petitioner vide his representation dated 12.09.2013.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.V.Haribabu
Additional Government Pleader(T)

ORDER

This petition is filed to call for the records on the files of the respondent in TIN.No.33832641915/2007-08 dated 23.01.2014 and quash the same as being contrary to the principle of natural justice and further direct the respondent to pass order afresh after furnishing copies of records as requested by the petitioner vide his representation dated 12.09.2013.

2. In the present writ petition, the petitioner has challenged the impugned notice dated 23.01.2014, wherein the portion of the order reads as follows:

"I have made purchases from the selling dealer Tvl.Visalakshi Traders, who was holding TIN No.33192641394 during my purchases on 31.03.2007. In fact I have made payment along with tax at the rate of 12.5% as VAT who in turn collected and paid to the department. When such being the case, it is surprised and shocked while receipt of your present notice dated 24.08.2013 whereby you have stated that the said selling dealer's registration certificate was cancelled with effect from 31.03.2007. I was informed by the selling dealer that he had given a letter on 23.04.2007 to the Commercial Tax Officer, Shevapet (South) Assessment Circle along with registration certificate and also godown certificate and thereby made request for cancellation of registration certificate as he was not inclined to continue his business from 01.04.2007."

3. The respondent had issued a show cause notice to the petitioner on 24.08.2013 and called upon the petitioner to reverse the proportionate tax credit availed on the invoice issued by Tvl.Visalakshi Traders, cancelled on 31.03.2007. It is the contention of the learned counsel for the petitioner that on the date of purchase of the goods when the invoice was generated, Tvl.Visalakshi Traders was holding valid registration and therefore subsequent cancellation of the registration cannot deny ITC availed. He submits that the petitioner had filed a reply on 12.09.2013 to that effect.

4. The learned counsel for the petitioner submitted that without considering the details of cancellation, the order has been passed. The learned Additional Government Pleader (CT), Mr.Haribabu states that the order is well reasoned and requires no interference. In any event, the petitioner has an alternate remedy by way of appeal.

5. I have considered the submissions. The petitioner has an alternate remedy by way of appeal. Hence, the order has been passed without considering the reply of the petitioner. Therefore, I am of the view that, one more opportunity can be given to the petitioner, to approach the respondent to make their representation. In case registration was cancelled before the purchase of inputs by the petitioner, the petitioner can be asked to reverse the credit.

6. In the light of the above observation, the impugned order is set aside and the case is remitted back to the respondent. The respondent is directed to pass an order within 30 days after giving opportunity to the petitioner of being heard. The petitioner may make additional submissions during the hearing. Therefore, the above writ petition stands allowed

by way of remand with above observation. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

rst

To

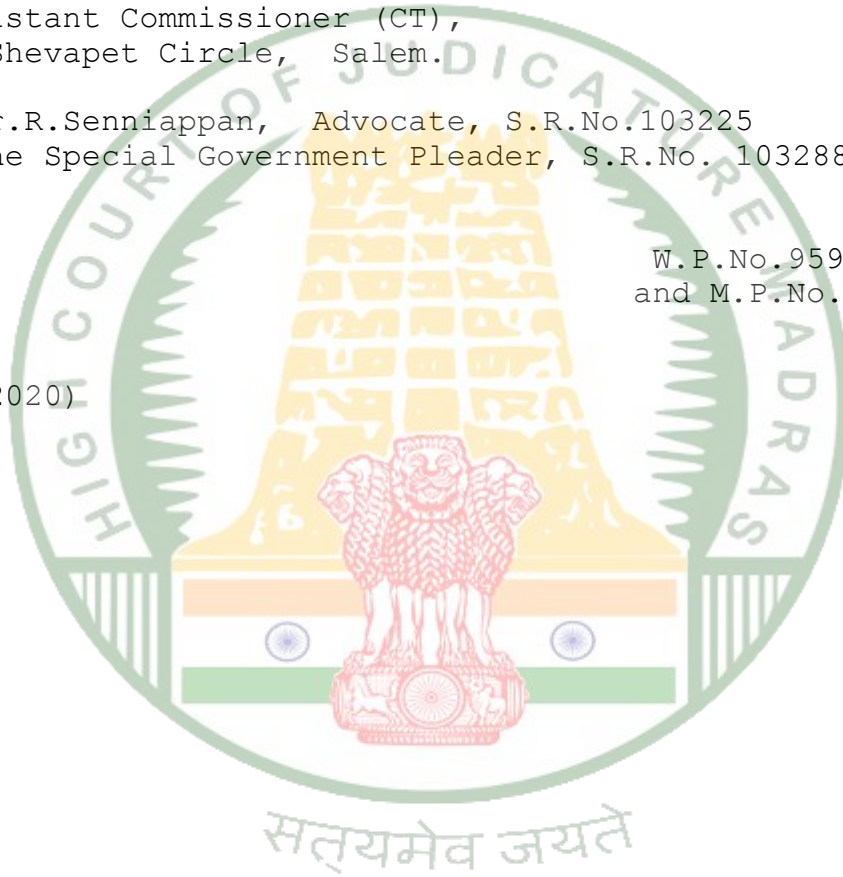
1.The Assistant Commissioner (CT),
(FAC), Shevapet Circle, Salem.

+lcc to Mr.R.Senniappan, Advocate, S.R.No.103225

+lcc to the Special Government Pleader, S.R.No. 103288

W.P.No.9598 of 2014
and M.P.No.1 of 2014

SSI (CO)
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