BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.06.2019

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)No.22334 of 2015
and
M.P.(MD)No.1 of 2015

M/s.Cee Kay Yes Decors,
Rep. By its Proprietor Mr.P.c.Kangavel,
500/1, 11th East Cross Street,
Annanagar, Madurai-20 ... Petitioner

Vs.

The Commercial Tax Officer,
Tallakulam Assessment Circle,
Madurai. ... Respondent

PRAYER:-Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings in TIN No.33304882082/2011-12 and quash the order dated 30-11-2015 and further direct the respondent to consider the claim of ITC as per Section 19(1) of the TNVAT Act in terms of the decisions of this Court reported in 50 VST 179 and 60 VST 283 and also in W.P.No.9265 of 2013 dated 06.11.2014 and pass appropriate order in accordance with law.

For Petitioner : Mr.R.D.Ganesan

For Respondent : Mr.R.Murugan
Additional Government Pleader

O R D E R

The petitioner seeks a certiorari quashing order dated 30.11.2015 passed in terms of Section 27 of the Tamil Nadu Value Added Tax Act (in short 'Act') for the period 2011-2012.

2. The petitioner is a sole proprietorship and a works contractor dealing in building materials. The assessment is assailed on the ground that it is based on a verification, comparison and alleged mismatch between the data relating to other dealers in the intranet of the Commercial Taxes Department and transactions as reported by the assessee. Input tax credit (in short 'ITC') has been reversed on the basis of the aforesaid alleged mismatch. According to the Assessing Authority, purchases have been made from

dealers, whose Registration Certificates (in short 'RC') have been cancelled. Thus, input tax credit has also been reversed in line with the aforesaid cancellation.

3. This Court has taken the view that in cases of alleged mismatch of data a mechanism be put in place to address and reconcile such mismatch after due opportunity is afforded to the assesee.

4. While such mechanism is being devised, the Special Commissioner and Commissioner, Commercial Taxes has, in the interim issued Circular bearing No.3 of 2019, directing the Assessing Officer to keep in abeyance assessments insofar as they relate to issues of alleged mismatch of data.

5. The decision of this Court in *Sri Vinyaga Agencies Vs. Assistant Commissioner (CT), Vadapalani-I, Assessment Circle, Chennai and another* [2013 60 VST 283 (Mad)] is to the effect that the provisions of Section 19 (1) of the Act entitle an assessee to claim ITC in respect of tax remitted to a selling dealer. Paragraphs 10, 11 and 12 of the aforesaid decision are relevant in this connection, and are extracted below:-

'*10. 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 had paid the tax to the selling dealer. If that be the 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.*

11. It is another matter that the selling dealer has not paid 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 purchase made.

12.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 case. 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 know 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.'

6. The above said decision has been confirmed by the Division Bench of this Court in W.A.No.1464 of 2016, of which I was part.

7. The learned counsel for the petitioner also points out that the order does not indicate any application of mind as far as the objections raised by the petitioner are merely reproduced and rejected. True, the order is cryptic and non speaking. As and when an order of assessment *denovo* is passed by the authority, it shall be a speaking order assigning reasons to the adjustments made, if any, in accordance with the requirements of natural justice and applicable provisions of law.

8. In the light of the aforesaid discussion, the impugned order of assessment, dated 30-11-2015 is set aside and the matter remanded to the assessing authority for *denovo* decision bearing in mind circular No.3 of 2019

9. This Writ petition is allowed in the aforesaid terms. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

/TRUE COPY/

Sub Assistant Registrar

To

The Commercial Tax Officer,
Tallakulam Assessment Circle,
Madurai.

+1 CC to M/s.R.D.GANESAN, Advocate (SR-70243[F] dated 20/06/2019)

W.P.(MD)No.22334 of 2015
20.06.2019

TA
JM/09.08.2019/3P-3C