BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.08.2019
CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.10647, 10648 & 10649 of 2016
and W.M.P(MD)Nos.8262 to 8264 of 2016

M/s.Bhavani Saw Mill,
Rep. by its Partner Jitendra Patel,
No.49/1, Tanjore Main Road,
Trichy. ... Petitioner in W.P(MD)No.10647/2016

M/s.K.S.Patel & Sons,
Rep. by its Partner Deepak Patel,
No.59/1C, Tanjore Main Road,
Trichy. ... Petitioner in W.P(MD)No.10648/2016

M/s.Shinago Exim (P) Limited,
Rep. by its Managing Director Shivagan Patel,
No.59/1C, Tanjore Main Road,
Trichy. ... Petitioner in W.P(MD)No.10649/2016

Vs.

The Assistant Commissioner (CT),
Tiruverumbur Assessment Circle,
Trichy. ... Respondent in all W.Ps'

Common Prayer: Writ Petitions 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 Nos.33123560653 / 2011-12, 33343560338 / 2012-13 and 33063563111 / 2011-12 dated 01.03.2016 and quash the same as it is unlawful and in violation of the principles of natural justice and further direct the respondent to consider the objections dated 29.02.2016 in all perspective on its merits and then pass appropriate order in accordance with law.

For Petitioner (in all W.Ps') : Mr.R.D.Ganesan
For Respondents (in all W.Ps') : Mrs.J.Padmavathy Devi, Special Government Pleader.

COMMON ORDER

The petitioners assail orders of assessment for the periods 2011-12, 2012-13 and 2011-12, all dated nil, signed on 01.03.2016 passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act').

2.The petitioners are dealers of Timber for the periods in question. Pre-assessment notices were issued on 23.12.2015, 29.12.2015 and 23.12.2015 proposing the reversal of ITC in terms of Section 19(5)(c) of the Act on the ground that the petitioners had effected inter-state sale of goods without 'C' Form Declarations to the tune of Rs.3,52,800/-, 3,06,050/- and Rs.29,96,100/-.

3.The petitioners replied on 05.01.2016 stating that the entire purchases had been imported and had been sold inter-state and that CST at the rate of 2% had been remitted in regard to the transactions. The explanations were accepted and the proposal categorically dropped under proceedings dated 07.01.2016 as follows:

> *'Tvl.Bhavani Saw Mill, Trichy were finally assessed on a total and taxable turnover of Rs.6,73,24,934/- and Rs.4,73,11,596/- respectively for the year 2011-12 under CST Act 1956 vide this office proceedings in the reference 1st cited. From the verification of assessment order it is found that the dealers effected interstate sales of Rs.3,52,800/- not covered by 'C' declaration forms. As per Section 19(5)(C) of the VAT Act, 2006, No Input Tax Credit shall be allowed on the purchase of goods sold as such or used in the manufacture of the goods and sold in the covers interstate trade or commence felling under sub-Section (2) of Section 8 of the CST Act, 1956.*
>
> *Accordingly a notice was issued to the dealers in the reference 2nd cited by proposing reversal of Input Tax Credit of Rs.40,546/- under Section 19(5)(C) of TNVAT Act, 2006. On receipt of the notice the dealers have filed a letter of objections in the reference 3rd cited in which they have stated that they have purchased goods through Imports and effected sold to other states against 2% on the sale value of Rs.3,52,822/-.*
>
> *Since they have not received the "C" form from the buyer, higher rate of tax was paid. Besides they have stated that the above transactions is purely through import purchase and they have not claimed any Input Tax Credit for the specified turnover, so they request to drop the proposal for Input Tax Credit reversal of Rs.40,546/-.*
>
> *The letter of objections along with proof of documents filed by the dealers were carefully examined.*

The dealer have established that they have made interstate sales of timber which have been imported from other countries by way of enclosing the Xerox copies of way bills and sale invoices. There were verified and found to be in order.

Hence the reversal of Input Tax Credit under Section 19(5)(c) does not arise. In the circumstances, the reversal of Input Tax Credit proposed in the notice is hereby dropped.'

4.Thereafter, notices have been issued once again on 26.02.2016 again seeking various particulars such as opening balance, purchase effects during the year and details of closing stock.

5.Having dropped the first proposal, there is clearly no justification for issuance of the second revision notice wherein the respondent has simply sought wide – ranging particulars from the petitioners.

6.It appears very clear to me that what the Assessing Authority has embanked in the second revision upon a fishing expedition. No flaw or lacunae in the turnover returned by the assessee has been pointed out in the second revision notice, in the absence of which the notice has no justification at all.

7.In the light of the aforesaid discussion, these Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar

To
The Assistant Commissioner (CT),
Tiruverumbur Assessment Circle, Trichy.

+3 CC to M/s.R.D.GANESAN, Advocate SR NOS-80899,80900,80901
+1 CC to M/s.SPL GP (SR-81505[F] dated 13/08/2019)

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PS
MS/17.09.2019/3P.6C