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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.02.2020

Pronounced on : 19.05.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.21085 to 21088 of 2016
and
W.M.P. Nos.18033 to 18036 of 2016

M/s.Bharat Steels
repreented by its Proprietor
Mr.Gulraj M.Jain,
No.4, Singanna Naicken Street
Chennai – 600 001. ..Petitioner in all petitions

Versus

The Commercial Tax Officer,
Broadway Assessment Circle,
199, Thambu Chetty Street,
Chennai – 1. ..Respondents in all petitions

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari, to call for the impugned proceedings of the respondent in TIN/33440061202/2009-2010, 2010-11, 2011-12 and 2012 - 13 and quash the impugned orders dated 27.05.2016 as passed based on the defects noticed from Commercial Taxes Department Web Site and so contrary to the principles of natural justice and also contrary to the judgment of the Hon'ble Supreme Court in the case of the State of Maharastra Vs. Suresh Trading Company reported in 109 STC 439 and the Hon'ble Madras High Court in the case of M/s.Jinsasan Distributors Vs. Commercial Tax Officer (CT) Chintaripet Asst. Circle reported in 59 VST 256, in the case of M/s.Althaf Shoes (P) Ltd. Reported in 50 VST 179, in the case of M/s.Sri Vinayaga Agencies reported in 60 VST 283, in the case of Aassan Global Trade in W.P.Nos.25996 to 25998/2014 and also in the case of M/s.Inifiniti Wholesale Limited in W.P.No.9265/2013.

For Petitioner : Mr.P.Rajkumar
For Respondent : Mr. R.Swarnavel, G.A.

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COMMON O R D E R

By this common order all the 4 writ petitions are being disposed. By the impugned orders all dated 27.5.2016, the respondent has confirmed the demand proposed in the revision notices that were issued to the petitioner for the assessment years 2009-10, 2010-11, 2011-12 and 2012-13.

2. Earlier, the petitioner was issued with 4 different revision notices all dated 28.1.2015 for the above assessment years. The petitioner reply to the above notice which culminated in 4 separate assessment orders dated 2.3.2015. The petitioner challenged these orders before this court in W.P.Nos. 9717-9720 2015. By a common order dated 1.4.2015, the impugned orders were set aside. The operative portion of the said order read as under:-

> "11.It is made clear that the petitioner is directed to appear in person and produce the documents required by the respondent duly attested by the seller on or before 30.4.2015 and on receipt of such documents, the respondent is directed to consider the same and after conducting enquiry and giving the petitioner an opportunity of being heard on 30.2015, the respondent shall pass appropriate orders on merits and in accordance with law. On 30.2015, if the petitioner fails to avail the opportunity for any reason whatsoever, the authority is empowered to pass orders on merits and in accordance with law, without being influenced by the orders that are set aside by this court. These writ petitions are disposed with the above directions. No cost. Connected miscellaneous petition is closed."

3. Pursuant to the aforesaid directions of this Court, the petitioner was issued with fresh notices dated 20.4.2015 for the respective assessment years. The petitioner also replied to the same on 23.4.2015 and appears to have filed a written objection on 13.4.2015. Though the then Asst. Commissioner of Commercial Taxes representing respondent appears to have heard the petitioner no orders were passed.

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4. Thereafter, 4 separate fresh notices were issued to the petitioner on 15.3.2016 for the respective assessment years. The petitioner once again filed a detailed reply to the same on 15.4.2016 for the respective assessment years. Meanwhile, certain proceedings were initiated in proceedings dated 29.02.2016 for assessment year 2013-14 and 2014-15.

5. The petitioner filed W.P.No. 16556 of 2016 and W.P.No 16457 of 2016 to stay all further proceedings of the respondent pursuant to proceedings dated 29.2.2016 for the assessment years 2013-14 and assessment years 2014-15. By an order dated 29.4.2016, this court had also granted an interim order for a period of 6 weeks. Thereafter, again 4 separate notices dated 18.4.2016 were issued to the petitioner for the respective assessment years.

6. Pursuant to the last mentioned notices dated 18.4.2016 for the respective assessment year, the petitioner once again filed separate objections dated 5.5.2015 for the respective assessment year. Pursuant to the aforesaid objection and hearing, the impugned orders have been passed by the respondent for the respective assessment years.

7. Heard learned counsel for the petitioner and for the respondent. The respondents have not filed a counter in the present writ petition. However, oral submissions were made on instructions. Core issue that arise for consideration in these writ petition are as follows:-

> "(i) Whether these present writ petition are maintainable?
>
> (ii) If so, Whether Respondents was justified in ordering recovery of input tax credit availed by the petitioner on the strength of invoices issued by dealers whose registrations were retrospectively cancelled? and
>
> (iii) Whether the petitioner has discharged the burden of proof required under Section/rule of the Tamil Nadu Value-Added Tax Act, 2006?"

8. The 1st issues is answered in favour of the petitioner even though the petitioner has an alternate remedy before the Appellate Deputy Commissioner by way of appeal under section 51 of the Tamil Nadu Value-Added Tax Act, 2006 as it

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would be unfair to dismiss the writ petition straightaway after having admitted it in 2016.

9. That apart I am also of the view that this is a fit case for making certain observations on merits. I therefore, take of these cases and dispose them on merits.

10. The 2nd issues is no longer res -integra. This court has taken a categorical view in the following cases that input tax credit cannot be denied to a purchasing dealer if the VAT registration of the supplier dealer who supplied the goods is cancelled retrospectively after the sale was affected to such a purchasing dealer:-

i.M/s.Inko Chemicals India (P) Ltd., Vs. The Commercial Tax Officer - made in W.A.No.763 of 2015 dated 19.06.2017;

ii.Rayan Tile Bazaar Vs. The Assistant Commissioner (CT) - made in W.P.No.1569 of 2018 dated 25.01.2018;

iii.Assistant Commissioner (CT), Boaradway Assessment Circle, Chennai V. Bhairav Trading Company - (2016) 96 VST 315 (Mad);

iv.Assistant Commissioner (CT) Vs. Infiniti Wholesale Ltd.(2017) 99 VST 341 (Mad);

v.Althaf Shoes (P) Ltd. Vs. Assistant Commissioner (CT) - (2012) 50 VST 179 (Mad);

vi.Jinsasan Distributors V. Commercial Tax Officer (CT) -(2013) 59 VST 256 (Mad) – ;

vii.M/S.Rinku Steel Industries Assistant Commissioner (CT) - (2013) 60 VST 283 (Mad) ;

viii.M/s.Aassaan Globel Trade Vs. The Assistant Commissioner (CT) - made in W.P.Nos.25996 to 25998 of 2014 dated 17.10.2014 ;

ix.Infiniti Wholesale Limited Vs. The Assistant Commissioner (CT) - made in W.P.No.9265 of 2013 dated 06.11.2014;

x.M/s.New Consolidated Construction Co. Ltd. Vs. The Assistant Commissioner (CT) - made in W.P.No.6980 of 2015 dated 12.03.2015–

xi.Tvl Raymix Concrete India Pvt. Ltd. Vs. The

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Assistant Commissioner (CT) - made in W.P.No.7522 of 2015 dated 18.03.2015;-

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11. Therefore, the 2nd issue is answered in favour of the petitioner. However the input tax credit that was availed by the petitioner was provisional as per section 19 (16) of the Tamil Nadu Value-Added Tax Act, 2016. Power are vested with the respondent to revoke the same if it appears that the credit was wrongly availed or otherwise not in order. Further as per Rule 10 of the Tamil Nadu Value-Added Tax Rules, 2007, an elaborate procedure has been prescribed for availing input tax credit.

12. From the facts of the case it is noticed that the petitioner has availed input tax credit on purchases which are of substantial value during the respective assessment years.

13. The petitioner has not produced any documents to substantiate the movement of goods from the selling dealer to the petitioner or its buyers. On the other hand, the petitioner has stated that goods were transported through bullock cart, tricycle and local vans for which no transfer documents were issued.

14. The petitioner also appears to have filed a sworn statement before the respondent which is not available for my perusal. In paragraph 8(a) to (b) of the written objection dated 5.5.2016, it has been stated as follows:-

> “a. All purchases and sales were made within Chennai,
>
> b. We get orders from our customers over phone, ultimately we place orders for supply of material to the buyer covered by tax invoices issued by us.
>
> c. The goods were transported only through bullock carts in the night from the seller place of business to the buyer’s place of business.
>
> d. The transfer charges includes the price of goods. We sold the goods purchased from our vendors duly Value-Added and transport charges for which we have paid taxes also.
>
> e. It is submitted that as per rule 6 (2) (a) of the T.N. VAT Rules, no movement register records need to be maintained. It is practically not possible to

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get transport receipt from the bullock cart owners."

15.Since the volume of purchase covered by each is invoice is not mentioned and since the petitioner has also not explained the details invoice wise in the objections filed by the petitioner, I am of the view that petitioner has not sufficiently discharged the burden of proof so as to regularise the input tax credit availed by the petitioner.

16.These details can be furnished by the petitioner. If indeed the quantity of individual purchases through each of the invoices were of comparatively smaller quantity which could be easily transported through bullock cart and/or tricycle, the petitioner could have produced the details with a proper explanation and tabulation.

17.However, to the extent the petitioner had purportedly transported the quantity through local vans, the owner of the such vans was obliged to issue consignment note under the provisions of the Finance Act , 1994.

18.These documents ought to have been produced by the petitioner to substantiate the claim for input tax credit on the tax charged on the sales and supplies purportedly affected by the selling dealers whose registrations were cancelled retrospectively since the petitioner can establish these facts, I am inclined to give one final chance to the petitioner.

19.Under these circumstances, I am constrained to set aside the impugned order and remit the case back to the respondent to pass fresh orders preferably within a period of 3 months from date of receipt of this order.

20.Accordingly, the impugned order is set aside. Petitioner is required to file a consolidated final reply to all the notices for the respective assessment years together with such evidence as may be available with the petitioner to substantiate the claim for input tax credit.

21.The Respondent as a quasi judicial officer under the provisions of the Tamil Nadu Value-Added Tax Act, 2006 shall be guided by the principle of preponderance of probability. The respondent is expected to arrive at a fair conclusion on facts as to whether the quantum of goods sold in each of the invoice would justify a conclusion that there was a possibility of supply of goods with bullock carts/tricycles/vans.

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22.The petitioner may file such evidence and objections within a period of one month from date of receipt of this order or within such period as may be given by the respondent.

23.The respondent shall thereafter pass appropriate orders within a period of 3 months or such other period. The petitioner may furnish such particulars as may be required by the respondent for conduct of the case through video conferencing, if situations so warrants on account of continuance of Covid19 pandemic.

24.These writ petitions stand disposed by way of remand with the above observations. All the miscellaneous petitions are closed. No. Cost.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

The Commercial Tax Officer,
Broadway Assessment Circle,
199, Thambu Chetty Street,
Chennai - 1.

W.P.Nos.21085 to 21088 of 2016

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