IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 40099 of 2015
and
M.P. No. 1 of 2015

Tvl Delux Stores,
Represented by its Proprietor
Thiru.K.Rajendran,
No.455, Nehru Street,
Tindivanam. ... Petitioner

Vs

The Deputy Commercial Tax Officer,
Tindivanam Assessment Circle,
136, 137, Nehru Street, (State Bank up stair),
Tindivanam. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in respect of the Proceedings TIN No.33854721293/2013-2014 dated 25.02.2015 of the Respondent under the Tamil Nadu Value Added Tax Act, 2006, quash the same.

For Petitioner : No appearance
For Respondent : Mr. A.N.R. Jayaprathap
Government Advocate

ORDER

This writ petition has been filed by the Petitioner, praying for the issuance of Writ of Certiorari, to call for the records in respect of the Proceedings TIN No.33854721293/2013-2014 dated 25.02.2015 of the Respondent under the Tamil Nadu Value Added Tax Act, 2006, quash the same.

2. Heard the learned counsel for the Petitioner and the learned Government Advocate for the Respondent.

3. The Petitioner has challenged the impugned order passed by the Respondent on 25.02.2015 for the Assessment Year 2013-2014. By the impugned order, the Respondent has denied the Input Tax Credit to the Petitioner to the instance of Rs.2,69,408/- and further imposed penalty under Rule 22(5) of the Tamil Nadu Value Added Tax Act, 2006. (in short the TNVAT Act, 2006).

4. It is noticed that the Petitioner's Assessment was completed and thereafter based on web verification it transpired that the dealer who sold the goods to the Petitioner had reported sale only for a sum of Rs.22,332/- and collected the tax of Rs.1,117/- which is ascertained from the Intra-net website. The Petitioner was issued with a notice dated 09.01.2015 and to which, the Petitioner has not filed any objections. Under these circumstances, the impugned order has been passed by invoking the provision under Section 22(4) of the TNVAT Act, 2006.

5. Though, there is no representation on behalf of the Petitioner, it is noticed that the issue not only covered by a decision of the Division Bench of this Court in "Bata Shoe Company Private Limited Vs The Joint Commercial Tax Officer, Harbour Division II, Madras and another, 1968 21 STC (Mad) in W.P. No. 589 of 1967 dated 18.10.1967 but also on merits in "Sri Vinayaga Agencies Vs The Assistant Commissioner (CT), W.P.No.2038 of 2013 dated 29.01.2013. It is to be noted that once the assessment is complete unless there are mistakes on the part of the Petitioner by violating TNVAT Rules, the Input Tax Credit cannot be denied. At best the Department could recover the Tax from the dealer who sold the goods to the Petitioner without paying Tax after collecting the same from the Petitioner. There is no discussion as to why the credit could be denied if the Petitioner was found eligible to credit at the time of original assessment. It is informed that these decisions have not been reversed till date.

6. In view of the same, I am inclined to allow this Writ Petition. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

arb

To

The Deputy Commercial Tax Officer,
Tindivanam Assessment Circle,
136, 137, Nehru Street, (State Bank up stair),
Tindivanam.

W.P. No. 40099 of 2015
and
M.P. No. 1 of 2015

MP(CO)
GN(09/03/2020)