IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	25.02.2020
Pronounced On	13.03.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.39262 to 39265 of 2016
and
W.M.P.Nos.33622 & 33624 of 2016

M/s. Inno-Tech Electronics Systems,
Rep. by it's Proprietor - M.Ravichandran,
No.138/B, Poes Road,
4th Street, Teynampet,
Chennai - 600 018. ... Petitioner in All W.Ps

Vs.

1.The Commercial Tax Officer,
Mylapore Assessment Circle,
Chennai - 600 028.

2.The Deputy Commissioner (CT),
Enforcement (East),
Chennai - 600 028. ...Respondents in All W.Ps

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the 1st respondent in his impugned proceedings made in TIN Nos.33050702247/2011-12, 33050702247/2012-13, 33050702247/2013-14 and 33050702247/2014-15 dated 01.12.2015 and consequential proceedings dated 23.03.2016 and to quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.J.Arokhiaraj in all W.Ps

For Respondents : Mr.A.N.R.Jayaprathap Standing Counsel, in all W.Ps.

C O M M O N   O R D E R

By this common order all the Writ Petitions are being disposed.

2. In these Writ Petitions, the petitioner has challenged the impugned orders dated 01.12.2015 passed by the 1st respondent in TIN No.33050702247/2011-12, TIN No.33050702247/2012-13, TIN No.33050702247/2013-14 and TIN No.33050702247/2014-15 and the consequential impugned proceedings dated 23.03.2016.

3. The petitioner is a trader in UPS. The petitioner’s place of business was inspected and audited under Section 65 of the TNVAT Act, 2006. Pursuant to the audit, the petitioner was issued with four separate notices for the Assessment Years 2011-12, 2012-13, 2013-14 and 2014-15 on 23.09.2015. The said Notices culminated in the impugned orders dated 01.12.2015 for the respective Assessment Years.

4. Prior to passing orders, the petitioner was issued with notices dated 23.09.2015 to file supporting documents along with its submission. The petitioner also filed its common reply to the said notices on 05.11.2015. An opportunity for personal hearing was also given to the petitioner vide separate letters dated 03.11.2015 for the respective Assessment Years.

5. However, after passing the assessment orders, the petitioner had raised the certain objections vide respective letters dated 16.01.2016 under Section 65 of the TNVAT Act, 2006 and requested for cancellation of the impugned orders dated 01.12.2015. The respondent rejected the same by consequential separate impugned notices dated 23.03.2016 for the Assessment Years 2011-12, 2012-13, 2013-14 and 2014-15 and advised the petitioner to file an appeal before the competent Appellate Authority. It is therefore two orders dated 01.12.2015 and 23.03.2016 are put to test in these Writ Petitions.

6. The dispute in these Writ Petitions pertains to availability of Input Tax Credit availed in respect of mismatch were pointed out. The petitioner has made several submission on the merits in the present Writ Petitions.

7. It is submitted that the petitioner was in a position to co-relate with relevant documents contemplated under Section 19 (10)(a) of the TNVAT Act, 2006 and Rule 10(2) of the TNVAT Rules, 2007 in respect of each and every purchases made by it to claim input tax credit in accordance with law under Section 19 (11) of the TNVAT Act, 2006.

8. It is the case of the petitioner that the issue is now squarely covered by the decisions of this Court in Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani Assessment Circle, Chennai and Another, 2013 SCC OnLine Mad 323 and in Althajf Shoes (P) Ltd., Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai, 2011 SCC OnLine Mad 2683.

9. In Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani Assessment Circle, Chennai and Another, 2013 SCC OnLine Mad 323, this Court held as follows:-

> "The dealer states that the sellers are still existing and doing business at Palayamkottai. If it is so what prevented them from discussing the issue with them and take the remedial measures. Finally, inasmuch as the facts remain that tax collected had not been paid by the seller and ITC was availed wrongly by the dealer at this end, law states that it has to be reversed as per the provision contained in Section 19(16) of TNVAT Act."
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> Reliance is placed on Section 19(16) as well to say that the input tax credit availed by the petitioner-registered dealer is provisional and the authority is empowered to revoke the same if it is found to be incorrect, incomplete or otherwise not in order.
>
> 9. Sub-section (16) of Section 19 states that the input tax credit availed is provisional. It, however, does not empower the authority to revoke the input tax credit availed 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 cases. 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 known 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. All the revision orders revising the input tax credit on the admitted case of tax having been paid to the selling dealer, therefore, are found to be totally incorrect, erroneous and contrary to the provisions of the

TNVAT Act and Rules. As a result, all the orders are liable to be set aside.

10. The learned Standing Counsel for the respondent submits that the impugned orders are well reasoned and require no interference. He further submits that the petitioner has an alternate remedy by way of appeal before the Appellate Deputy Commissioner under the provisions of the TNVAT Act, 2006. Therefore, the present Writ Petitions are liable to be dismissed as not maintainable.

11. I have considered the arguments advanced on behalf of the petitioner and the respondent.

12. This Court while exercising its jurisdiction under Article 226 of the Constitution of India, is not sitting as an Appellate Court to examine the merits and demerits of claim of the petitioner. These are disputed questions of facts to determine the rate of Input Tax Credit. Therefore, the present Writ Petitions lack merits.

13. In M/s.JKM Graphics Solutions Private Limited Vs. The Commercial Tax Officer, 2017 SCC OnLine 669, this Court set aside the notices/orders either original or appellate or revisional and the matters are remanded to the respective Assessing Officers, to undertake a fresh exercise by conducting a thorough enquiry in consultation with the Assessing Officers of the other end dealer for which purpose the Commissioner of Commercial Taxes shall empower the Assessing Officers to seek information from other circles as well and in the mean time to evolve a centralized mechanism to exclusively deal with the cases of mismatch and while doing so, the Principal Commissioner shall take note of the procedures adopted by the other States, more particularly, in Maharastra, Gujarat and Delhi and if any statutory amendments have to be made, make appropriate recommendations to the State Government, and till then to devise a procedure which is fair and reasonable and afford an opportunity to the dealer to putforth his case and establish that he is entitled to the concession/set-off availed.

14. Therefore, the impugned orders are set aside and the cases are remitted back to the 1st respondent to pass fresh orders in accordance with law keeping in mind the decisions of this Court in Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani Assessment Circle, Chennai and Another, 2013 SCC OnLine Mad 323 and in M/s.JKM Graphics Solutions Private Limited Vs. The Commercial Tax Officer, 2017 SCC OnLine 669.

15. Since it is informed that though the mechanism has been devised as per the decision of this Cout in M/s.JKM Graphics Solutions Private Limited referred supra, it has not been

notified till date. Therefore, no time limit is prescribed for the 1st respondent to pass fresh orders. The 1st respondent is therefore directed to pass appropriate orders as and when the said circular, which has been framed pursuant to the direction of this Court in M/s.JKM Graphics Solutions Private Limited Vs. The Commercial Tax Officer, 2017 SCC OnLine 669, is implemented.

16. The present Writ Petitions are allowed by way of remand. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Commercial Tax Officer,
Mylapore Assessment Circle,
Chennai - 600 028.

2.The Deputy Commissioner (CT),
Enforcement (East),
Chennai - 600 028.

+1cc to M/s Arokiaraj, Advocate, S.R.Nos.17353,17354,17355,17356.

W.P.No.39262 to 39265 of 2016

CO/RK
adl/29.05.2020