IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	14.02.2020
Pronounced On	27.02.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.10549 & 10550 of 2014
and
M.P.Nos.1 & 1 of 2014

Tvl. Trust Metal
New No.414, (309-B) Mint Street,
Park Town, Chennai - 3.
Rep. by its Proprietrix Bhagwanti Devi. ...Petitioner in both W.Ps.

Vs.

Assistant Commissioner (CT),
Moore Market (South) Assessment Circle,
Chennai - 01. ...Respondent in both 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 of the respondent in TIN.No.33330360944/2006-07 and TIN.No.33330360944 /2007-08 dated 30.04.2013 and quash the same.

For Petitioner : Mr.S.Raveekumar
in both W.Ps.

For Respondent : Mr.G.Dhanamathri
Government Advocate(T)
in both W.Ps.

C O M M O N   O R D E R

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

2. In these Writ Petitions, the petitioner has challenged impugned orders dated 30.04.2013 passed by the respondent in TIN:33330360944/2006-07 and TIN: 33330360944/2007-08.

3. By the impugned orders, the respondent Assistant Commissioner (CT) has re-determined the taxable turnover and has confirmed the tax liability of the petitioner as Rs.5,55,418/- for the Assessment Year 2006-07 and Rs.21,18,592/- for the assessment year 2007-8.

4. The entire tax levy liability was discharged by the petitioner on the strength of Input Tax Credit (ITC) of Rs.5,49,263/- and Rs.21,15,792/- for the respective years, after adjustment towards CST sales.

5. In this connection, separate Show Cause Notice were issued to the petitioner on 29.12.2009 followed with other notices dated 04.10.2012. The petitioner had replied to the same on 10.12.2012 for the respective Assessment Years.

6. In these notices, it was contended by the respondent Assistant Commissioner (CT) that the petitioner had availed Input Tax Credit on the strength of invoices issued by dealers who had availed Input Tax Credit on the strength of invoices of dealers whose registrations were cancelled either and/or there was no proof of their sale of goods to the petitioner's sellers.

7. The operative portion of the impugned orders read as under respectively:-

> Impugned in W.P.No.10549 of 2013:-
>
> In the instant case the selling dealers (CC) Tvl. Satthyam Marketing and Tvl.Sumathi Trading ICT claim had been entirely his allowed and reversed as not paid any tax by their sellers as listed above purchase Tvl.Balaji Marketing to Sri Sai Enterprises to Tvl. Sattiyam Marketing and Surabhi Trading and the cancelled that the above dealers had purchased goods from un known sources and wrongly availed ITC and the purchases.
>
> In assessment as the seller ITC to the assessee had been entirely disallowed the claim of ITC now mad and allowed in this office self assessment order @ Rs.84,27-00 is reversed overlooking the objection filed by the dealer.
>
> Further the dealer had not proved that their claim of exemption on their sales only to SEZ with recorded evidence and the goods sold were either actually exported to other countries or otherwise used by the unit in SEZ. In the algence of such

details the T.O of R.C.1,49,065-00 already allowed extreme there is non disallowed and assured to tax @ 4%.

In view of the above, the dealer's total and taxable T.O are received and refused as below for the year 2006-07 under TNVAT Act, 2006.

Impugned in W.P.No.10550 of 2014:-

In the instant case the selling dealers (CC) Tvl. Sathyam Marketing and Tvl.Surabhi Trading vifoul sales corporation ITC claim and had been entirely disallowed and reversed as not paid any tax by their sellers (i.e) Alishek Traders to Real Traders as listed above and purchase as Tvl. Rama Metals, Chetra Enterprises etc. and thus calculated that the above dealer had purchased goods from unknown source and wrongly availed ITC and the purchases.

In assessment as the seller ITC to the assessee had been entirely disallowed the claim of ITC now made by the dealer in full is revised in full over looking the objection filed by the dealer.

Further the dealer had not proved that their claim of exemption on their sales only to SEZ with recorded evidence and the goods sold were either actually exported to otherwise used by the unite in SEZ. In the algence of such details the T.O. of RC.75,887-10 is allowed to tax @ 4%.

In view of the above, the dealers' total and taxable T.O are determined as below for the year 2007-08 under taxable @ 4% under TNVAT Act, 2006.

8. The learned counsel for the petitioner relies on the following decisions:-

i. State of Kerala Vs. K.T.Shaduli Yusuff, (1997) 2 SCC 777.
ii. State of Maharashtra Vs. Suresh Trading Company, (1997) 11 SCC 378.
iii. Assistant Commissioner (CT), Presently Thiruverkadu Assessment Circle, Kolathur, Chennai Vs. Infiniti Wholesale Ltd., [2017] 99 VST 341 (Mad).
iv. Assistant Commissioner (CT), Broadway

Assessment Circle, Chennai Vs. Bhairav Trading Company, [2016] 96 VST 315 (Mad).

v. Infiniti Wholesale Limited Vs. Assistant Commissioner (CT), Koyambedu Assessment Circle, 2015 (3) LW 202 (Mad).

vi. JKM Graphics Solutions Private Limited Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai, [2017] 99 VST 343 (Mad).

9. On the other hand, it is the contention of the respondent that the present Writ Petitions are not maintainable as the petitioner has an alternate effective remedy and the decision cited by the learned counsel for the petitioner can in any event be cited before the Appellate Deputy Commissioner under Section 51 of the TNVAT Act, 2006 and therefore the present Writ Petitions are liable to be dismissed.

10. It is further submitted that some of the petitioner's dealers had resorted to circular transactions with a view to pass on Input Tax Credit (ITC) without pay tax by abusing the provisions under the then newly implemented TNVAT Act, 2006.

11. I have considered the submissions of the learned counsel for the petitioner and the respondent.

12. The disputes in the present cases are better left to be adjudicated in appeals as there are disputed questions of fact and the appellate authority would be in a better position to call for the records to verify the claim of the petitioner.

13. In this case, the petitioner claims to have availed Input Tax Credit on the strength of invoices raised by some of the dealers who had in turn purchased from other dealers who had not shown having sold the goods to the petitioner's dealers from whom the petitioner had purchased the goods.

14. Since there are disputed questions of fact and the dispute is not purely confined only law, I am of the view that the present Writ Petitions are liable to be dismissed with liberty to the petitioner to file an statutory appeal before the Appellate Deputy Commissioner.

15. Though the impugned orders are dated 30.04.2013, the present Writ Petitions have been filed almost after a period of one year and perhaps to circumvent the dismissal of appeal on ground of limitation the present Writ Petitions have been filed.

16. Since the petitioner may have fair cases on merits, I am inclined to permit the petitioner to file an appeal within a period of thirty days from date of receipt of a copy of this

order subject to other requirements of pre-deposit under the provisions of the TNVAT Act, 2006.

17. The petitioner may therefore file appeals against the impugned orders within the aforesaid period. In case such appeals are filed together with the pre-deposit is contemplated under the Act, the Appellate Deputy Commissioner is requested to consider the respective appeals on merits and dispose the same in accordance with law without reference to the limitation. Since the dispute pertains to the Assessment Years 2006-07 and 2007-08, the Appellate Deputy Commissioner may dispose the appeals within a period of three months of their being filed.

18. The Writ Petitions stand disposed with the above observation. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

To

Assistant Commissioner (CT),
Moore Market (South) Assessment Circle,
Chennai - 01.

+2cc to Mr.S.Ravee Kumar, Advocate, S.R.No.17434

+1cc to the Spl Government Pleader(Taxes), S.R.No.17937

Pre-Delivery Common Order in
W.P.Nos.10549 & 10550 of 2014
and M.P.Nos.1 & 1 of 2014

EV(CO)
RN(01/06/2020)