IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.35301 & 35302 of 2013
and
M.P.Nos.2 & 2 of 2013

Tvl.Shanthi Metal Corporation,
Rep., by Partner, K.Shanmugam,
No.270, Mint Street, Park Town,
Chennai-03. ..Petitioner in both W.Ps.

-vs-

The Assistant Commissioner (CT)(FAC),
Park Town II Assessment Circle,
No.191, N.S.C.Bose Road,
Wavoo Complex, 5th Floor,
Chennai-01. ..Respondent in both W.Ps.

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the respondent in TIN 33740400731/2009-10 and TIN 33740400731/2010-11 dated 15.10.2013 and the consequential proceedings in Letter TIN 33740400731/2009-10 and TIN 33740400731/2010-11 dated 22.11.2013 and quash the same.

For Petitioner (In both W.Ps.)	:	Mr.M.Hariharan
For Respondent (In both W.Ps.)	:	Mr.V.Nanmaran, Government Advocate

COMMON ORDER

The petitioner is an assessee on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as “the TNVAT Act”).

2.The petitioner filed their monthly returns for the assessment years 2009-10 and 2010-11 indicating the purchases and sales made by them as per the provisions of the TNVAT Act and claimed input tax credit for the tax paid by them at the time of purchase. The sales invoices furnished by the selling dealers indicate that they are registered dealers under the TNVAT Act and the payment by the petitioner was made by cheque.

3.The grievance of the petitioner in nutshell is that the licence was cancelled with retrospective effect and further, the licence of the second dealer was also cancelled and such a retrospective cancellation of licences is bad in law. In order to substantiate the grounds, the learned counsel for the petitioner relied on the judgment of the Hon'ble Division Bench of this Court in the case of Assistant Commissioner (CT), Broadway Assessment Circle vs. Bhairav Trading Company reported in (2016) 96 VST 315 (Madras). The learned counsel for the petitioner relied on paragraphs 20 and 22 of the above said judgment, which read as follows:-

> "20. We have already considered, what the Hon'ble Apex Court in Suresh Trading Company's case , has held. Revenue has not placed any contrary judgments, nor pleaded that the judgements, stated supra, are inappropriate to the facts on hand. In the light of the above, all the writ appeals dealing with reversal of input credit, are dismissed. However, there shall be no order as to cost. Consequently, the connected civil miscellaneous petitions are closed.
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> 22. Order impugned before the writ court was cancellation of the Registration Certificate of M/s.Vijayshree Metals, Chennai/respondent, with retrospective effect. Placing reliance on the decision of this court in Jinsasan Distributors vs. Commercial Tax Officer (CT), Chintadripet Assessment Circle, Chennai, reported in 2013 59 VST 256 (Mad) and by observing that the said decision is squarely applicable to the facts to W.A.No.753/2016, the writ court, has set aside the order dated 12.01.2015 of the Assessing Officer, cancelling the Registration Certificate of the seller, with retrospective effect, with a further direction to the Assessing Officer, to activate the Registration Certificate, within one week from the date of receipt of a copy of the above said order."

4.This Court is of the considered opinion that the Hon'ble Division Bench in paragraph 22, placing reliance on the decision in the case of Jinsasan Distributors vs. Commercial Tax Officer (CT), Chintadripet Assessment Circle, Chennai reported in (2013) 59 VST 256 (Madras), and by observing that the said decision is squarely applicable to the facts to W.A.No.753 of 2016, held that the Writ Court, has set aside the order passed by the Assessing Officer, cancelling the Registration Certificate of the seller with retrospective effect. The Hon'ble Division Bench in clear terms held that the decision is applicable to the facts of the case before it.

5.As far as the present writ petition is concerned, though the learned counsel for the petitioner made a submission that the impugned orders passed as well as the facts are almost akin to that of the above decision of the Hon'ble Division, this Court is of the opinion that such an adjudication of facts are to be undertaken by the appellate authority for the purpose of extending the benefit of the order passed by the Hon'ble Division Bench.

6.The principles laid down by the Hon'ble Division Bench are to be scrupulously followed. However, complete adjudication of facts and its applicability with reference to the principles laid down are of paramount importance for the purpose of rendering complete justice to the parties to the lis. Such a factual adjudication requires verification and scrutinisation or original records, documents and evidences. The exercise is to be done by the appellate authority in the present case, as the learned counsel for the petitioner reiterated that the original authority has failed to consider these aspects and moreover, the judgment of the Hon'ble Division Bench was delivered subsequently after passing of the impugned orders and therefore, the original authority had no occasion to consider the said principles. Under these circumstances, in the interest of justice, it would be appropriate that the petitioner must be given an opportunity to adjudicate the facts and circumstances as well as to place the judgment of the Hon'ble Division Bench before the appellate authority concerned for the purpose of redressal of their grievances. These being the principles to be followed, this Court is of the considered opinion that adjudication of facts, application of principles laid down shall be done by the appellate authority by following the procedures contemplated and by affording opportunity to the petitioner. The petitioner is permitted to file appeal to the jurisdictional appellate authority within a period of six weeks from the date of receipt of a copy of this order in a prescribed format and by complying with the provisions of the TNVAT Act along with the documents as well as the judgment relied upon and in the event of filing any such appeal, the appellate authority is directed to consider the same, adjudicate the issues on merits and in accordance with law by affording opportunity to the petitioner and dispose of the appeal as expeditiously as possible preferably within a period of three months from the date of receiving the appeal.

With the above directions, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

abr

To

The Assistant Commissioner (CT)(FAC),
Park Town II Assessment Circle,
No.191, N.S.C.Bose Road,
Wavoo Complex, 5th Floor,
Chennai-01.

+2cc to Mr.M.Hariharan, Advocate, S.R.No.35870
+1cc to the Government Pleader, S.R.No.36093

W.P.Nos.35301 & 35302 of 2013

PCH(CO)
RGA(17/08/2021)