IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NO.14213 OF 2020
AND
W.M.P.NO.17685 OF 2020
(THROUGH VIDEO CONFERENCING)

M/s. Coastal Plastochem Pvt., Ltd.,
Rep by the Managing Director,
No.08, Rajiv Tower,
Purasawakkam High Road,
Chennai - 600 010. ... Petitioner

Vs

Assistant Commissioner (CT)
Purasawakkam Assessment Circle,
Chennai- 600 010. ... Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarifid Mandamus, calling for the records of the respondent and quash the revision of assessment proceedings of the mismatch orders in TIN:33270483294/2016-17 dated 03.08.2020 issued therein and direct the respondent to pass fresh orders as per the decision of the Supreme Court reported in 109 STC page No.439.

For Petitioner : Mr.C.Baktha Siromoni

For Respondent : Mr.Richardson Wilson
AGP

ORDER

This writ petition has been filed challenging the impugned assessment order dated 03.08.2020 in TIN:33270483294/2016-17. Impugned Order is extracted below:-

"PROCEEDINGS OF THE ASSISSTANT COMMISSIONER(ST)
PURASAWAKKAM ASSESSMENT CIRCLE
PRESENT: THIRU.R.RAMACHANDRAN

STATION: F-50, FIRST AVENUE, ANNA NAGAR (EAST), CHENNAI-600 102.

TIN/33270483294/2016-2017 Dated: 03.08.2020

Sub: -	TNVAT Act 2006-Tvl.Coastal Plastochem P Limited-Assessment Year 2016-17-Purchased from cancelled dealers-Notice issued-Order passed reg-Reg
Ref: -	1) This Office notice is Tin No:33270483294/2013-2014 dated 21.01.2020 2) Dealer letter dated 07.02.2020 3) Dealer letter dated 21.02.2020 4) This office personal hearing notice dated 28.02.2020 5) Dealers letter dated 09.03.2020

Tvl. Coastal plasto chem private Ltd is a registered dealer under TNVAT Act at shop no.8, Dr. Rajeev Tower, 2nd floor, No.231, Purasawakkam high road, Chennai- 600010.

On verification of our CTD data the dealer has effected purchase from cancelled dealer from Frontline polymers(Tin 33472804491) &Sri Kannan chemicals for the Turnover of Rs.8643000/- in the year 2016-17. As per section 19(1%) of the TNVAT Act stipulates that where a registered dealer has purchased any taxable goods from another dealer and has availed input tax credit in respect of the said goods and if registration of the selling dealer is cancelled by the registering authority on the date from which the order of the cancellation takes effect.

Hence the input availed on the purchase is reversed as follows.

Taxable Turnover Rs. 86, 43, 000/-@5%

Tax of Rs. 4, 32, 150/- is to be reserved

Tvl Costal plasto chem private Ltd, are requested to file their objection if any against the above proposals in writing within fifteen days from the date of receipt of this notice. They are also given personal hearing to appear before the undersigned on any working at his office at above address vide reference 3rd cited. If they fail the file their objections and fail to avail the said opportunities, the proposals in this notice will be confirmed without further notice.

A notice dated; 21.01.2020 was issued in the reference 1st cited. In the reference second cited. In the reference 2nd cited, the dealers stated that they are in receipt of the notice and stated that at the time of purchasing goods they were active dealer and moreover they have done all banking transaction. Under the circumstances they request you not to reverse input availed by you against the Purchases made from above dealers.

I reference 3rd cited they have stated that in respect of the cancelled dealers of M/s Frontline polymers (TIN No.33472804491) and M/s Sri Kanan chemical (TIN 33492844056) they enclosed the copies of the invoice as well as ledger statement and Bank statement of above parties to proceed further.

Personal hearing also issued on 09.03.2020. They requested time to appear on 23.03.2020. They have not appeared on that day. Again personal hearing issued to appear on 27.07.2020. They again stated that at the time of purchasing they were active dealers and moreover they have done all banking transactions. Hence they requested that not to reverse the ITC.

The reply filed by the dealer was verified and found that it is not acceptable for the reason that the seller issued invoice after the actual date of cancellation of registration. So the dealer statement the seller was active dealer at the time of raising the invoice is not correct.

Sl.No	Name of the dealer	Inv. No and date	Turnover value	Tax	Cancellation WEF	Cancellation date
1	Frontline polymers	260/6/2/2017	1856000	92800	23.12.2016	4.1.2017
		275/18.02.2017	1740000	87000		

Sl.No	Name of the dealer	Inv. No and date	Turnover value	Tax	Cancellation WEF	Cancellation date
		282/22.02.2017	1972000	98600		
		286/28.02.2017	765000	38250		
2	Sri kannan chemicals	146/23.7.2018	2310000	115500	1.07.2016	22.07.2016
		Total		4,32,150		

the Hence the Tax was reversed as follows
Taxable Turnover of Rs. 86,43,000/-@5%

Reversal due due of	Rs.4,32,150/-
Tax paid	NIL
Balance	Rs. 432150/-"

2. It is the case of the petitioner that the demand confirmed in the impugned order is contrary to the decision of the Supreme Court in State of Maharastra Vs. Suresh Trading Company 1998 (109) STC 439 (SC) which decision has been followed by this Court even in the context of input tax credit. It is submitted that the petitioner is a bona-fide purchaser of materials which were traded by the petitioner and therefore, the petitioner was entitled to input tax credit under the provisions under Section 19 of the Tamil Nadu Value Added Tax Act, 2006.

3. It is submitted that purchases were made by the petitioner through normal banking channel (mode of payment) and that the cancellation of the registrations of the dealers with retrospective effect from 23.12.2016 and 01.07.2016 were long after the purchases were made by the petitioner on various dates.

4. Learned counsel for the petitioner therefore, submits that the impugned order was not sustainable and therefore, liable to be quashed. Appearing on behalf of the respondent, learned counsel for the respondent submits that the writ petition is devoid of merits and is liable to be dismissed. It is submitted, the petitioner has an alternate remedy by way of an appeal before the Appellate Commissioner under Section 51 of the Tamil Nadu Value Added Tax Act, 2006.

5. Learned counsel for the respondent, further submits that the cancellation of the registration of the respective dealers are made on 04.01.2017 with effect from 23.12.2016 and on 22.04.2016 with effect from 01.07.2016. It is therefore,

submitted that the purchases were made by the petitioner only after the date of cancellation of the registration was made on 04.01.2017 and 22.07.2016. It is therefore, submitted that the petitioner cannot claim to be a bona-fide purchaser of goods to avail input tax credits for the purchase made from the two dealers namely Frontline Polymers and Sri Kannan Chemicals.

6. Learned counsel for the respondent submits that several friday night dealers have registered to facilitate fraudulent input tax credits and many of the dealers were also participating in the same.

7. Learned counsel for the respondent therefore, submits that no mercy should be shown under Article 226 of the Constitution of India where records themselves speaks. Learned counsel for the respondent submits that the decision of the Supreme Court rendered in State of Maharastra Vs. Suresh Trading Company 1998 (109) STC 439 (SC) by the learned counsel for the petitioner is therefore, distinguishable on facts of the case and cannot be applied to the facts of the case.

8. Heard learned counsel for the respondents perused the impugned order. The facts on records indicate that the purchases were made by the petitioner long after the cancellation of the registration of Front Line Polymers on 04.01.2017 and one day after the cancellation of registration of Sri Kannan Chemicals on 22.07.2016. Therefore, there is no merits in this writ petition and it is liable to be dismissed. However, while dismissing the writ petition I am inclined to allow the petitioner to exercise the alternate remedy by filing a statutory appeal before the Appellate Commissioner within a period of 30 days from the date of receipt of copy of this order, subject to the petitioner depositing 25% of the disputed tax along with the appeal. If such an appeal is filed by the petitioner within a period of 30 days from the date of receipt of copy of this order the Appellate Commissioner shall pass appropriate order in accordance with law within a period of 60 days thereafter. Needless to state that the petitioner shall be heard.

9. The writ stands disposed of in terms of the above observations. Consequently, the connected writ miscellaneous petition is also closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

nst Sub Assistant Registrar

To

Assistant Commissioner (CT)
Purasawakkam Assessment Circle,
Chennai- 600 010.

+1cc to the Special Government Pleader(Taxes), S.R.No.63759

W.P.No.14213 of 2020
and
W.M.P.No.17685 of 2020

SV(CO)
PM/10/01/2022