IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

W.A.No.15 of 2017
and
C.M.P.No.222 of 2017

1. The Assistant Commissioner (CT),
   Vadapalani-I Assessment Circle,
   Chennai - 600106.

2. The Assistant Commissioner (CT),
   Palayamkottai Assessment Circle,
   Palayamkottai. ...Appellants

Vs

Sri Vinayaga Agencies,
No.4/4B, Nergundram Pathai,
100 Feet Road, Vadapalani,
Chennai. ...Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order passed by the learned Judge in common order in W.P.No.2038 of 2013 dated 29.01.2013.

WP.2038 of 2013: Petition under Article 226 of the Constitution of India, praying for the issue of a writ of certiorari, to call for the records of the impugned orders in TIN No.33251463587, for the Assessment years 2008-09, 2009-10 and 2010-11 respectively, dated 11-01-2013 received on 18-01-2013 on the files of the first respondent herein, quash the same.

For Appellants: Mr.Md.Shaffiq
Special Government Pleader

For Respondent: Ms.Aparna Nandakumar

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

We have heard Mr.Mohamed Shaffiq, learned Special Government Pleader appearing on behalf of the appellants and Ms.Aparna Nandakumar, learned counsel for the respondent.

2. This appeal, filed by the appellants, is directed against the common order passed by this Court in W.P.Nos.2036 to 2038 of 2013 dated 29.01.2013.

3. The writ petitions were allowed and the orders of assessment were set aside and the respondent was permitted to avail the Input Tax Credit (ITC). Against the impugned common order, the State had preferred an appeal in W.A.No.4292 of 2019 and the Hon'ble Division Bench of this Court, by judgment dated 04.03.2020, has dismissed the writ appeal. The operative portion of the judgment reads as follows:

> "6. We have heard the learned counsel appearing for both sides.
>
> 7. We are satisfied that prior to amendment and substitution of proviso under Section 19(1) of the Act, with effect from 29.1.2016, the period in question before us, is covered by the pre-amendment position of law and since the proviso (1) to section 19, which is prior to 29.1.2016, only requires the registered dealer namely, the purchasing dealer to establish that the tax due on such purchase has been paid by him in the manner prescribes, this fact was duly proved by the purchasing dealer in the present case and the assessing authority himself has noted the said fact,
> therefore, there was no question of denying the input tax credit in the hands of the purchasing dealer against out put dealer, in terms of 19(1) of the Act, as it stood for the period in question 2009-2010. Such giving of input tax credit in the hands of purchasing dealer, however does not deprive Revenue authorities to proceed against the selling dealer M/s Tvl.Classic Enterprises, to recover the tax paid by the Purchasing dealer.
>
> 8. In the present case, for non-deposit of due tax collected form the purchasing dealer M/s.Vinayaga Agencies, the Revenue is therefore free to hold enquiry against the selling dealer and collect the Revenue from the selling dealer, which money in the hands of selling dealer, is held in trust for the State by the selling dealer. It is not the case of the Revenue before us that the

selling dealer in the present case is a non-existent or a ghost dealer. The identity and registration of the selling dealer and the fact that he collected the tax from the purchasing dealer in question are duly proved on record and are not disputed.

9. In view of this legal position, we do not have any doubt that the learned Single Judge was perfectly justified in allowing the writ petition filed by the Assessee directing the respondent to allow the ITC in the hands of purchasing dealer under Section 19(1) of the Act.

10. With these observations, the appeal is dismissed. No costs. Consequently, the connected CMP.No.26910 of 2019 is closed."

4. Since the impugned order, which is a common order, has been upheld by the Division Bench and the said judgment would enure in favour of the respondent in this appeal as well, the present writ appeal is dismissed, by following the aforementioned decision. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//
Sub Assistant Registrar

hvk

To

1. The Assistant Commissioner (CT),
Vadapalani I Assessment Circle,
Chennai - 600106.

2. The Assistant Commissioner (CT),
Palayamkottai Assessment Circle,
Palayamkottai.

+1cc to Special Govt.Pleader(Taxes) SR.6357

W.A.No.15 of 2017
and
C.M.P.No.222 of 2017

RLD(CO)
CB(05/03/2021)
CB(24/03/2021)