IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NOS.4791, 4796, 4797 & 4802 OF 2022
AND
W.M.P.NOS.4899, 4901, 4905, 4907,
4906, 4904, 4908 & 4909 OF 2022

M/s.Sri Ram Pharma,
No.4, 7th main Road, New Colony,
Chennai - 44, rep.by its Partner,
AN.Selvam

... Petitioner in all W.Ps

Vs

1. The Commercial Tax Officer,
   Pallavaram, Assessment Circle,
   Chennai - 600 044.

2. Assistant Commissioner (ST)
   Pallavaram, Assessment Circle,
   Nandanam, Chennai - 600 034.

3. Tamil Nadu Mercantile Bank Ltd.,
   No:33, Siva Shanmugam Street,
   Tambaram West, Chennai - 600 045.

... Respondents in all W.Ps

Prayer in W.P.No.4791 of 2022:

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the 1st respondent relating the proceedings TIN No:33840880826/ 2008-09 dated 10.12.2021 and quash the same.

Prayer in W.P.No.4796 of 2022:

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the 1st respondent relating the proceedings TIN No:33840880826/ 2010-11 dated 10.12.2021 and quash the same.

Prayer in W.P.No.4797 of 2022:

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the 1st respondent relating the proceedings TIN No:33840880826/ 2009-10 dated 10.12.2021 and quash the same.

Prayer in W.P.No.4802 of 2022:

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the 1st respondent relating the proceedings TIN No:33840880826/ 2011-12 dated 10.12.2021 and quash the same.

For Petitioner : Mr.P.Senthil Dhandapani
[in all W.Ps]

For Respondents : Mr.V.Prasanth Kiran
Government Advocate
[in all W.Ps]

COMMON ORDER

Since the issue raised in these writ petitions is one and the same, with consent of the learned counsel appearing for both sides, these writ petitions were heard together and are being disposed of by this common order.

2. That the relevant Assessment Years are 2008-09, 2009-10, 2010-11 and 2011-12. Insofar as these four Assessment Years are concerned, the petitioner/assessee had claimed Input Tax Credit [in short, 'ITC'] and that the same was availed.

3. Subsequently, the Revenue having verified the Books of Accounts, Vouchers etc., had come to the conclusion that, in respect of the purchase transaction taken place in these Assessment Years from the selling dealers, those selling dealer's registration certificate had been cancelled by order dated 28.05.2010 with retrospective effect from 05.04.2007.

4. Therefore, on that basis, ITC claimed by the petitioner/assessee was sought to be reversed, that is how these orders have been passed on 10.12.2021 in all these four Assessment Years, making the assessment of reversing the ITC claimed by the petitioner/assessee for the relevant Assessment Years and to make the tax liability to be paid by the petitioner

in this regard.

5. Challenging these orders dated 10.12.2021 in all these cases, these writ petitions have been filed.

6. Heard Mr.P.Senthil Dhandapani, learned counsel appearing for the petitioner, who would submit that, the petitioner is a genuine purchasing dealer, who purchased from various selling dealers for those years and at the time of purchasing the same as the transaction taken place long back, the petitioner/assessee did not know registration certificate of those selling dealers were cancelled by order dated 28.05.2010 that too retrospectively from 05.04.2007.

7. Atleast for the Assessment Years 2008-09 and 2009-10, certainly, the registration certificates were alive during the transaction taken place between the selling dealers and the petitioner, because the registration was cancelled only on 28.05.2010, of-course, with retrospective effect from 05.04.2007. Therefore, it could not be expected that in future, the registration of the selling dealers would be cancelled with retrospective effect.

8. He would also submit that, in so far as Assessment Years 2010-11 and 2011-12 are also concerned, if these transactions have been taken place genuinely and it is not the case of the Revenue that, it is only a mere bill transaction or bill trading, the petitioner cannot be proceeded for the reversal of ITC on the reason that the petitioner purchased and the transaction taken place with selling dealers, whose registration certificates have been cancelled on 28.05.2010.

9. This position since has not been made known to anyone including the petitioner/assessee, it cannot be stated that the transaction taken place for the Assessment Years 2010-11 and 2011-12 also to be considered as a transaction taken place from the selling dealers, whose registration have been cancelled and on that ground, the petitioner's availing of ITC has to be reversed.

10. In support of his contention, the learned counsel appearing for the petitioner has relied upon the following decisions:

(i) In the case of Jinsasan Distributors Vs. Commercial Tax Officer (CT), reported in 2013 (1) MLJ 157;

(ii) In the case of Tvl.Indian Products Vs. Commercial Tax Officer, made in W.P.No.40382 to 40385 of 2016 dated 17.11.2016;

(iii) In the case of Infiniti Wholesale Limited (Formerly known as Woolworths Wholesale (India) Private Limited Vs. The Assistant Commissioner (CT), reported in 2015 (2) C.W.C. 73;

(iv) In the case of State of Maharashtra Vs. Suresh Trading Company, reported in 1997 (11) SCC 378.

11. On the other hand, Mr.V.Prasanth Kiran, learned Government Advocate appearing for the respondents/Revenue would contend that, insofar as the claim made for ITC for the transaction taken place with the selling dealer, whose registration have been cancelled are concerned, whether ITC claimed by the purchasing dealer could be reversed or not is to be done in accordance with Section 19 (15) of the Tamil Nadu Value Added Tax Act, 2006 [in short 'the Act']. He relies upon Sub-Section 15 of Section 19 of the Act, which reads thus:

> "19. ....
> (15) 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 the registration certificate of the selling dealer is cancelled by the appropriate registering authority, such registered dealer, who has availed by way of input tax credit, shall pay the amount availed on the date from which the order of cancellation of the registration certificate takes effect. Such dealer shall be liable to pay, in addition to the amount due, interest at the rate of 1 [two] per cent, per month, on the amount of tax so payable, for the period commencing from the date of claim of input tax credit by the dealer to the date of its payment."

12. By relying this provision, learned Government Advocate would submit that, if the registration certificate of the selling dealers is cancelled by the appropriate registering authority, such registered dealers, who have availed by way of ITC, shall pay the amount availed on the date, from which, the order of cancellation of the registration certificate takes effect.

13. Therefore, the learned Government Advocate would point out that, if not from 05.04.2007, the date on which, retrospectively the cancellation has been taken effect, atleast

from 28.05.2010, the date on which, the actual cancellation was made, the petitioner is liable to get the reversal of the ITC as the petitioner has availed the input tax already, it has to be necessarily reversed within the meaning of Section 19 (15) of the Act. Therefore, absolutely, there is no impediment or infirmity attached with the impugned order. Hence, the learned Government Advocate appearing for the respondents/Revenue seeks dismissal of these writ petitions.

14. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

15. Insofar as the transaction taken place during the Assessment Years 2008-09 and 2009-10 are concerned, the very Section 19 (15) itself has given the benefit to the purchasing dealer, since the language used therein is that, such registered dealer, who has availed by way of Input Tax Credit shall pay the amount availed on the date, from which, the order of cancellation of the registration certificate takes effect.

16. Though such a language is used, that from the date, the registration certificate takes effect which includes the retrospective effect, the Courts have given their interpretation with regard to the said provision namely Section 19(15) of the Act, where, the aforesaid decision cited by the petitioner company would certainly advance the case of the petitioner for the period covered between 05.04.2007 and 28.05.2010. In the judgment cited, i.e., 2013 (1) MLJ 157, the Courts have taken the view that, whatever benefits that has accrued to the petitioners based on valid documents in the course of sale of purchase of goods, for which, tax has been paid, cannot be declined. The transaction that took place, when the registration certificate of the selling dealers were in force, cannot be denied to the petitioner/assessee on the said plea.

17. Almost, similar view had been taken in other cases also, where, during the period, where the registration certificate was alive i.e., prior to the date of cancellation of certificate, what are all the transaction taken place with the selling dealer, whose registration certificate subsequently been cancelled, the purchasing dealer like the assessee/petitioner, if made those transaction or sale that means, if any ITC claimed or availed by the purchasing dealer for transaction taken place during the period, where, the selling dealers', registration certificate was alive, that availment of ITC cannot be reversed.

18. When that being the position, the ITC reversal now sought to be made through the impugned orders pertaining to Assessment Years 2008-09 and 2009-10 are concerned, this Court has no hesitation to hold that, those orders would not stand in the legal scrutiny. Therefore, the writ petitions in W.P.Nos.4791 of 2022 and 4797 of 2022 pertaining to Assessment Years 2008-09 and 2009-10, are liable to be allowed.

19. However, insofar as the Assessment Years 2010-11 and 2011-12 are concerned, those transactions had taken place only during the said years i.e., after the cancellation order was passed on 28.05.2010.

20. In this context, it was also a point urged not only by the petitioner counsel, but across the Bar that, Rule 22 of the Tamil Nadu Value Added Tax Rules, 2007 [in short 'the Rules'] made clear that, there must be publication of certain documents, which include the cancellation of registration certificate, for which, the learned counsel rely upon Rule 22(e) of the Rules, which reads thus:-

> “22. Publication of information in respect of assessees - (1) the following informations in respect of the assesses will be published under Section 79 namely:-
>
> “.................
>
> (e) Names of dealers with details, whose registration certificates have been cancelled.”

21. Quoting this provision of the Rules, learned counsel for the petitioner/assessee and other supporting learned counsels across the Bar who assist the Court would contend that, since it has been mandated under the Rule that, everything should be published, which includes the order passed by the authority concerned, who cancels the registration certificate and if that is not published, then the plea can be taken that the transaction taken place without the knowledge of the cancellation, as the same since has not been published, can be saved from the purview of reversal of ITC within the meaning of Section 19(15) of the Act.

22. If we delve into the said plea raised by the assessee's side, we must see Section 79 of the Act, which reads thus:

"79. Publication of information in respect of the Assessees .--

(1) If the Government is of opinion that it is necessary or expedient in the public interest to publish the names of any assessees and any other particulars relating to any proceedings under this Act in respect of such assessees, they may, subject to such conditions as may be prescribed, cause to be published, such names and particulars in such manner as they think fit.

(2) No publication under this section shall be made in relation to any penalty imposed, or any conviction for any offence connected with any proceedings under this Act, until the time for presenting an appeal or a revision, as the case may be, has expired without an appeal or revision having been presented or the appeal or revision, if presented, has been disposed of.

Explanation-- In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers, or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Government, the circumstances of the case justify it."

23. Section 79 (1) of the Act says that, if the Government is of the opinion that it is necessary or expedient in the public interest to publish the names of any assessees and any other particulars relating to any proceedings under the Act in respect of such assessees, they may, subject to such conditions as may be prescribed, cause to be published, such names and particulars in such manner as they think fit.

24. The language used in Section 79(1) of the Act suggest that, it is purely the discretion of the Government that, if it is in the opinion that something to be published that it is necessary or expedient in the public interest, the Government may publish it.

25. Only pursuant to Section 79 of the Act, Rule 22 has been made, where, the opening line of Rule 22 states that "the following information in respect of assessees will be published

under Section 79 namely”

26. Therefore, what has been stated in Section 79 of the Act for publication, that has been enumerated in Rule 22, which includes names of the dealers with details, whose registration certificates have been cancelled.

27. Therefore, the order, cancelling the registration is one of the document may be published under Section 79 (1) of the Act, that does not mean that, each and every such cancellation order issued by the authority shall be published within the meaning of Section 79 (1) of the Act as it is not mandated under Section 79(1) of the Act that, those orders shall be published.

28. Therefore, the non-publication of such cancellation of registration would not give raise to claim by the assessee that, merely because the registration cancellation was not published, he can avail the ITC and the same cannot be reversed within the meaning of Section 19(15) of the Act. Therefore, that plea raised on the side of the petitioner/assessee, supported by some of the learned counsels across the Bar, in my considered opinion, is liable to be rejected. Accordingly, it is rejected.

29. Therefore, in view of the aforestated facts and circumstances and discussions herein above made, this Court is inclined to dispose of these writ petitions with the following orders:

(i) That in respect of the writ petitions in W.P.Nos.4791 and 4797 of 2022 the respective impugned orders in these writ petitions are set aside. Accordingly, these writ petitions are allowed.

(ii) The impugned orders in W.P.Nos.4796 and 4802 of 2022 are concerned, for the Assessment Years 2010-11 and 2011-12, where, the transactions admittedly taken place after 28.05.2010, those impugned orders are to be sustained. Accordingly, these writ petitions are dismissed.

(iii) However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

30. After dictating the orders, learned counsel appearing for the petitioner/assessee wants 30 days time to make payment as per the demand made for the Assessment Years 2010-11 and 2011-12, accordingly, this court is inclined to grant thirty (30) days time for making such payment. While making such

payment, if any amount had already been deposited for those Assessment Years by deducting the same, the balance payment can be made by the assessee.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Commercial Tax Officer,
   Pallavaram, Assessment Circle,
   Chennai - 600 044.

2. Assistant Commissioner (ST)
   Pallavaram, Assessment Circle,
   Nandanam, Chennai - 600 034.

3. Tamil Nadu Mercantile Bank Ltd.,
   No:33, Siva Shanmugam Street,
   Tambaram West, Chennai - 600 045.

+4ccs to Mr.P.Senthil Dhandapani, Advocate, S.R.No.14276, 14277, 14278, 12279
+1cc to the Special Government Pleader(Taxes), S.R.No.14792

W.P.No.4791 of 2022

BP(CO)
PM/09/06/2022