IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2022

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.NO.6199 OF 2019 &
WMP.NOS.7044 & 7047 OF 2019

Tvl. Everest Enterprises,
Rep. by its Partner Mrs.Jeyam Valarmathi,
Door No.77, Eldams Road,
Teynampet, Chennai – 600 018. ... Petitioner

Vs

1. The Joint Commissioner (ST),
   Chennai (East) Division,
   Greams Road, Chennai.

2. The Assistant Commissioner (CT),
   Alwarpet Assessment Circle,
   No.46, Greenways Road, Chennai – 600 028.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the 2nd respondent in TIN No.33530821390/2011-12 dated 28.01.2015, and the consequential impugned proceedings of the 1st respondent in R.P.No.56/2015 dated 31.05.2018, quash the same.

For Petitioner	:	Mr.M.Hariharan for Mr.S.Ravee Kumar
For Respondents	:	Mr.V.Prashanth Kiran, Government Advocate

ORDER

Heard Mr.Hariharan, learned counsel for the petitioner and Mr.V.Prashanth Kiran, learned counsel for the respondents.

2. The petitioner assails an order passed by the Joint Commissioner in relation to the assessment year 2011-12 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act'). The petitioner was in receipt of notice alleging purchases from dealers whose registrations had been cancelled, as a result of which, the Input Tax Credit (ITC) availed by it had come to be reversed. The order, in conclusion, had contained the following note:

> "Note: An Appeal against this order lies before the Joint Commissioner (CT), Chennai (East) Division, IIIrd Floor, Greams Road, Chennai – 600 006 within 30 days of receipt of this order."

3. In compliance with the above note, the petitioner has moved the Joint Commissioner by way of a Revision Petition within the time period as stipulated, on 12.02.2015.

4.While the Revision Petition was pending, the Assessing Authority received an erratum correcting the note, to read as follows:

> "Note: An Appeal lies to the Appellate Deputy Commissioner (CT), Chennai (East) within thirty days from the date of receipt of such order."

5. No doubt, upon receipt of the erratum, the petitioner could well have withdrawn the Revision Petition and approached the Appellate Deputy Commissioner by way of an appeal. It did not choose to do the same, but instead awaited further hearing of the Revision Petition filed by it. No action was thereafter taken till the impugned order has come to be passed rejecting the petitioner's Revision Petition for want of jurisdiction by the Joint Commissioner. Hence, this Writ Petition.

6.On merits, the issue, as fairly acceded by the learned Government Advocate, is squarely covered by a decision of the Hon'ble Supreme Court in the case of State of Maharastra Vs Suresh Trading Company [109 STC 439] as well as of this Court in Assistant Commissioner (CT), Broadway Assessment Circle, Chennai Vs Bhairav Trading Company [96 VST 315].

7.The aforesaid decisions are to the effect that where the cancellation of registration of the selling dealers are retrospective and were in force at the time when the transactions were entered into qua that dealer and the assessee in question, then the transaction is to be viewed as legitimate and the input tax that is consequent upon and relatable to such transactions should not be denied and such claim is liable to be allowed.

8.In the present case, admittedly, the cancellation of registration in the cases of all the selling dealers has only been retrospective and it is for this reason learned Government Advocate would accede fairly to the position that the issue on merits is covered in favour of the petitioner.

9. The question that thus arises is whether the Writ Petition is hit by laches as the petitioner had admittedly not approached the appropriate authority despite receipt of the erratum putting it to notice that it had knocked the doors of the wrong authority.

10.I prefer to conclude in favour of the petitioner, seeing as the petitioner had been prompt in approaching the appellate authority, had adhered to the note that formed part of the original assessment order directing it to approach the Joint Commissioner and for the reason that the issue on merits that is squarely covered in favour of the petitioner. For the aforesaid reasons, I am of the considered view that the impugned proceedings have no legs to stand and are consequently set aside.

11.This Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kbs

To

1. The Joint Commissioner (ST),
   Chennai (East) Division,
   Greams Road, Chennai.

2. The Assistant Commissioner (CT),
   Alwarpet Assessment Circle,
   No.46, Greenways Road, Chennai - 600 028.

+1cc to Mr.S.Ravee Kumar, Advocate, S.R.No.33176
+1cc to the Special Government Pleader(Taxes), S.R.No.33226

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SSN(CO)
PM/22/07/2022