IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2023

CORAM :

The HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.8673 & 8674 of 2020
and W.M.P.Nos.10510 & 10511 of 2020

PSR Associates
Rep by its partner Mr.N.Padmanaban,
4/268(1),Gayathri Garden,
Umapathi Nagar,
Behind Mahalalakshmi Nagar,
Tirupur Road, Palladam. .. Petitioner
in both writ petitions

vs

1.The Assistant Commissioner (ST),
Tiruppur (South) Assessment Circle
Tiruppur.

2.The State Tax Officer
Enforcement Group-II, Tirupur. .. Respondents
in both writ petitions

Prayer in W.P.No.8673 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the impugned proceedings of the first respondent in TIN 33462461078/2013-2014 dated 12.02.2020 and quash the same in so far as it relates to the issue relating to reversal of ITC Invoking section 19 (13) of the TNVAT Act as the same is passed contrary to the law laid down by the Honble Madras High Court in the case of Sri Vinayaga Agencies Reported in 60 VST 283 affirmed by the Division Bench Of the Madras High Court in the case of Assistant Commissioner Vs Sri Vinayaga Agencies in W.A.No.4292/2019 by an order dated 04.03.2020 and in the case of Assistant Commissioner (CT) Vs Infinite Wholesale Ltd reported in 99 VST 341 and also in violation of principles of natural justice.

Prayer in W.P.No.8674 of 2020: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the Impugned Proceedings of the First Respondent in TIN 33462461078/2014-2015 dated 12.2.2020 and quash the same in so far as it relates to the issue relating to reversal of ITC invoking Section 19(13) of the TNVAT act as the same is passed contrary to the law laid down by the Honble Madras High court in the Case of Sri Vinayaga agencies reported in 60 VST 283 affirmed by the Division bench of the Madras High court in the Case of Assistant Commissioner Vs Sri Vinayaga agencies in WA. No 4292/2019 by an order dated 4.3.2020 and in the case of Asst Commissioner (CT) VS Infinite Wholesale ltd reported in 99 VST 341 and also in violation of principles.

For Petitioner	:	Mr.P.Rajkumar (in both writ petitions)
For Respondents	:	Mr.C.Harsha Raj Additional Government Pleader (in both writ petitions)

COMMON ORDER

Heard Mr.Rajkumar, learned counsel for the petitioner and Mr.Harsha Raj, learned counsel for the respondents.

2. The petitioner is a dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006, (in short, 'Act'). This is the second round of litigation that the petitioner has embarked on, in respect of assessments for the periods 2013 – 2014 and 2014 – 2015. The orders of assessment relate to two issues being sales returns that have been disallowed and disallowance of ITC under

Section 19(13) of the Act, the latter issue arising in respect of the period 2014 – 2015 only. A perusal of the orders of assessment are illuminating.

3. The Officer has dealt with disallowance of sales returns as follows:-

> *"**Defect No.4 Sales Returns Not allowed As per Notice***
>
> *Sales Return disalowed = 6231921/-*
>
> ***Dealers reply:***
>
> *With reference to rejection of sales return, we had already reported both in the monthly return in the monthly return for June 2013 as Rs.62,31,921/- and also in the Audited Balance Sheet. The entire sales returns were effected within a period of six months and eligible for exemption as per rule 10(6)(b)(i) of the TNVAT Rules 2007.*
>
> ***The dealers reply is not accepted***
>
> *The dealer failed to produce the documentary evidences for sales return under Rule 10(6)(b) of the TNVAT Rules 2007. Their fore the sales return was disallowed*
> *Sales Return disallowed = Rs.6231921/-*
> *Tax @ 5% for Rs.6231921 = Rs.311596/-*
> *Total Due = Rs.467394/-"*

4. The conclusion of the officer is that no documentary evidence has been produced as required in terms of Rule 10(6)(b)

of the Tamil Nadu Value Added Tax Rules, 2007. In fact, the petitioner has filed a reply dated 12.02.2020 along with annexures at the time of personal hearing on the same date. The reply and annexures are referred to in references 11 and 12 of the impugned order.

5. The list of enclosures at sl.no.6 refers to credit notes in connection with sales return. However, the officer has ignored the document indicating nil application of mind in this regard. The impugned order being non-speaking and indicating no application of mind on this aspect, and is set aside to this extent.

6. Coming to the second issue which is common to both years, being reversal of ITC under Section 19(13), the dealer has set out a detailed reply in the following terms:-

> *"Dispute : 05: Reversal of ineligible ITC u/s 19(13)*
>
> *You had proposed reversal of ITC on the purchase of goods for Rs.2861280/- with ITC amount of Rs.1,43,064/- effected from TVL.K.B.Creations, Tirupur having TIN: 33442312087, on the ground of the above seller had not reported the sales in the monthly filed.*
>
> *We wish to state that the above seller, TVL.K.B.Creations, No.16A, Ramya Colony 2nd street, Tirupur were a registered dealers having*

TIN : 33442312087 and filed monthly returns in the office of Asst;Commr(ST) North Circle, Tirupur, we had made payments for the purchases through Canara Bank Tirupur Branch and we had taken the ITC on the strength of the purchase invoices along with the goods and availed ITC as per Section 19(1) of the TNVAT Act 2006.

As per the following judicial judgment, if the seller, had not paid tax on their sales, or not reported the sales in the returns, the seller alone has to be penalized and not the buyer, we had discharged our burden of proof as required under Section 17 of the Act, 2006 by producing the related documents.

The claim of ITC can not be denied in the case of furnishing seller name, address, TIN etc., as per the decision reported in WP No.3473 to 3479 of 2015 dt 11.2.2015 in the case of Sri Andal & Co Salem v AC (CT) Shevapet Circle, Salem.

As per the principle laid down by the Hon'ble High Court Madras in the case of JKM Graphics Solution Pvt Ltd v CTO Vepery Assessment Circle, Chennai – 6 reported in (2017) in 99 VST 343 (MAD) (W.P.No.105/2016) we are not liable for reversal of ITC on the said purchase value we have relied on the following judicial judgments which are squarely applicable to our issue.
1. (2013) 60 VST 283(MAD) in the case of Sri Vinayaka Agencies v AC (CT) Vadapalani – A Circle, Chennai.
2. (2013) 59 VST 256(MAD) in the case of Jinsasan Distributors v CTO (CT) Chintadripet Circle, Chennai.
3. (2012) 50 VST 179 (MAD) in the case of Althof Shoes (P) Ltd v AC (CT) Valluvarkottam Circle, Chennai.
4.(2015) 82 VST 457 (MAD) in the case of Infinity Wholesale Ltd v AC (CT) Koyambedu

Circle, Chennai.
5. (2015) 2015-16-(21)/TNCT – WP No.11404 to 11407 of 2015 dt 24.04.2015 in the case of M/s.Pohairav Trading Company, Chennai 01 – v AC (CT) Broadway Circle, Chennai.
6. (2015) – WP No.9717 to 9720 of 2015 dt 01.04.2015 in the case of Bharat Steels, Chennai v AC(CT) Broadway Circle, Chennai.
7. (2015) WP No.12441 to 12444 of 2015 dt 27.04.2015 in the case of Nandeem Tanning Company, Vaniyampadi v AC (CT) Vanniyampadi TNCTJ – 21 (15-16).

As per the judicial judgment delivered in the case of M/s.Anand bond Ltd v AC Thiruvanmiyur in WP No.37355 to 37558 /2016 and also in the case of M/s.Kwality Plasto Pack v State of TN.AC(CT) Kothavalchavadi, it was held that "merely because certain details are available in the official website of the Department and does not match with the monthly returns submitted by the dealers that cannot be a sole basis for reversing ITC or revising the assessment.

Finally in this regard, we request you to kindly receipt our reply and records and drop the reversal of ITC, based on the above judicial judgement and drop the penalty also."

7. Supporting documents have also been furnished. The entirety of the reply has been extracted in the assessment order. However, while confirming the disallowance of ITC, the officer merely refers to Section 19(13) of the Act and nothing else and does not address the contentions put forth by the petitioner in the reply. The conclusion is as follows:-

"The dealers Reply is not accepted

According to Section 19(13) of the TNVAT Act, 2006

19(13) Where a registered dealer without entering into a transaction of sale, issue a invoice, bill or cash memorandum to another registered dealer, with the intention to defraud the Government revenue, the assessing authority shall, after making such enquiry as it thinks fit and giving a reasonable opportunity of being heard, deny the benefit of input tax credit to such registered dealer who has claimed input tax credit based on such invoice, bill or cash memorandum from such date.

Purchase Value = 2861280/-
Tax @ 5% = 143064/-
Penalty u/s 27(4)(ii)= 143064/-
Total due = 286128"

8. I see no justification for the reversal of ITC, finding the impugned order cryptic and arbitrary. The reversal of ITC & penalty are set aside.

9. These writ petitions are allowed to the extent indicated in the paragraphs above. No costs. Connected miscellaneous petitions are closed.

13.03.2023

Index:Yes/No
Neutral Citation:Yes
ssm

To

1. The Assistant Commissioner (ST),
   Tiruppur (South) Assessment Circle
   Tiruppur.

2. The State Tax Officer
   Enforcement Group-II, Tirupur.

DR. ANITA SUMANTH,J.

ssm

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