

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2016

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.40382 to 40385 of 2016 &
WMP Nos.34451 & 34452 of 2016

Tvl.Indian Products Ltd.,
rep. by its Manager Mr.P.Karthik
.. Petitioner in all W.Ps.

Vs

1.The Commercial Tax Officer
Velandipalayam Circle
Coimbatore.
.. Respondent in all W.Ps

Common Prayer:

Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Writ of Certiorarified Mandamus to call for the
records of the respondent in his proceedings pursuant to the
Assessment Orders passed in TIN 333462000096/2009-2010,
2010-2011, 2011-2012 & 2012-2013 dated 30.09.2016 received by
the petitioner on 20.10.2016, quash the same and direct the
respondent to redo the assessments for fresh orders.

For Petitioner : Mr.K.R.Krishnan
(in all W.Ps)

For Respondent : Mr.S.Kanmani Annamalai
(in all W.Ps) Addl. Government Pleader

COMMON ORDER

Heard Mr.K.R.Krishnan, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice for the respondent. By consent, the Writ Petitions are taken up for disposal.

2.The petitioner is a dealer in Chilly, Cardamom and Turmeric and registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act]. The challenge in these Writ Petitions is to orders of assessment passed under the provisions of the TNVAT Act, for the years 2009-2010, 2010-2011, 2011-2012 & 2012-2013 dated 30.09.2016.

3.The impugned orders are challenged only with regard to two issues. Firstly, as to whether the Input Tax Credit which has been reversed by the respondent, on the ground that the sellers have not paid taxes or their registration certificates have been cancelled even prior to the date when the petitioner effected purchases, is justified and the second issue would be on the ground that the petitioner had belatedly submitted Form-W. With regard to the other issues, the learned counsel for the petitioner on instructions submitted that the petitioner will pay the taxes as quantified in the impugned orders. Thus, this Court is testing the correctness of the impugned orders

only on the above two issues raised.

4. With regard to the first issue, as to whether the purchasing dealers can be held liable for non-payment of tax by the selling dealers on account of retrospective cancellation of their registration certificates, this is no longer *res intergra* as it has been settled by this Court in several decisions. The recent decision on the point is in *JINSASAN DISTRIBUTORS v. COMMERCIAL TAX OFFICER (CT), CHINTADRI PET ASSESSMENT CIRCLE, CHENNAI [(2013) 59 VST 256 (Mad)]*, wherein it was held as follows:

"Insofar as the cancellation of the registration certificates of the selling dealers is concerned, it is for the selling dealers to canvas the plea as to when it will take effect either on the date of the order or with retrospective effect. Insofar as the petitioners are concerned, they have purchased the taxable goods from registered dealers who had valid registration certificates; paid the tax payable thereon; availed of input-tax credit; and the assessing officers have passed orders granting such benefit. Therefore, the assessment orders granting input-tax credit were validly passed. There was no cancellation of the registration certificates of the selling dealers at that point of time. The petitioners/assesseees have paid input tax based on the invoices issued by registered selling dealers and availed of input-tax credit. The retrospective cancellation of the registration certificates issued to the selling dealers cannot affect the

right of the petitioners/assesseees, who have paid the tax on the basis of the invoices and thereafter claimed the benefit under section 19 of the TNVAT Act, 2006. They have utilized the goods either for own use or for further sale. At the time when the sale was made, the selling dealers had valid registration certificates and the subsequent cancellation cannot nullify the benefit that the petitioners/assesseees availed of based on valid documents. "

5.The other issue which has been raised by the respondent for reversal of Input Tax Credit is on the ground that the selling dealer has not paid taxes. This issue was considered by this Court in the case of *SRI VINAYAGA AGENCIES v. ASSISTANT COMMISSIONER (CT), VADAPALANI-I ASSESSMENT CIRCLE, CHENNAI AND ANOTHER* [(2013) 60 VST 283 (Mad)], which has been followed by this Court in *INFINITI WHOLESALE LIMITED v. THE ASSISTANT COMMISSIONER (CT) KOYAMBEDU ASSESSMENT CIRCLE* [2015 (82) VST 457]. The operative portion of the order reads as follows:

"23. In the case of Sri Vinayaka Agencies, cited supra, the petitioner was dealer in lubricants, purchasing lubricants from a registered dealer. On inspection, it was found that the vendor / dealer had not filed monthly returns nor paid tax to the Department. Though the petitioner had paid tax to the selling dealer, revision notice was issued proposing that the ITC should be reversed on the failure of the selling dealer in paying the tax. Allowing the said writ petition, it was held that at the time of filing

the self-assessment return under Section 22 (2), the petitioner-dealer had followed Rule 10 (2) of the Tamil Nadu Value Added Tax Rules, 2007, and therefore, could not be said to have wrongly availed of input tax credit wrongly. Section 19 (1) states that input-tax credit can be claimed by a registered dealer, if he establishes that the tax due on such purchase has been paid by him in the manner prescribed and that was accepted at the time when the self-assessment was made. The pre-revision notices and the orders clearly stated that the petitioner-dealer had paid the tax to the selling dealer. If that be the case, it was held that the petitioner's case therein squarely fell under the proviso to Section 19 (1) of the Act. Further, it was another matter that the selling dealer had not paid the collected tax. The liability had to be fastened on the selling dealer and not on the petitioner-dealer which had shown proof of payment of tax on purchases made. The orders were thus set-aside."

Thus, the first issue raised in these Writ Petitions is squarely covered by the Hon'ble Division Bench decisions of this Court and the impugned orders to that extent are liable to be set aside.

6.The second aspect with regard to the belated submission of Form-W, is concerned, this Court has taken into consideration the Circular issued by the Commissioner of Commercial Taxes, in Circular No.22/2014 dated 12.05.2014, that even though Statutory Forms such as Form-W are submitted belatedly, that by itself will not be the reason to reject the same. Therefore, to that extent, the respondent

was not justified in outrightly rejecting the Form-W, belatedly submitted by the petitioner. Therefore, the matter has to be remanded back to the respondent with a direction to consider Form-W.

7. Accordingly, the Writ Petitions are partly allowed and the impugned orders, in so far as reversal of Input Tax Credit on the ground that the selling dealer has not paid taxes/selling dealers registration certificates have been cancelled, are quashed. In so far as the rejection of the petitioner's Form-W on the ground that it has been produced belatedly, such a finding is set aside and the matter is remanded to the respondent for fresh consideration by taking note of the Circular issued by the Commissioner and the cases referred above. With regard to the other issues, since the petitioner has not challenged the same, the petitioner is directed to pay the taxes as demanded on the other issues. No costs. Consequently connected Miscellaneous Petition is closed.

17.11.2016

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To

1. The Commercial Tax Officer
Velandipalayam Circle
Coimbatore.

T.S.SIVAGNANAM, J

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