

W.A.No.3270 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C. SARAVANAN

W.A.No.3270 of 2024

State Tax Officer
Harbour Assessment Circle
No.116, Angappa Naicken Street
Chennai – 600 001.

.. Appellant

Vs.

M/s. Arunachala Impex Pvt. Ltd.
Rep. By its Managing Director S.Kalaivani
No.192/237, Thambu Chetty Street
Parrys, Chennai – 600 001.

.. Respondent

Prayer: Appeal filed under Clause 15 of the Letter Patent Act,
against the order made in W.P.No.18927 of 2020 dated 10.04.2023.

For the Appellant : Mr.V.Prasanth Kiran
Government Advocate

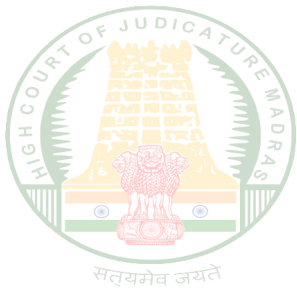
For the Respondents : Mr.N.Murali

JUDGMENT

(Judgment of the Court was authored by C. SARAVANAN, J.)

The appellant is before this Court against the order dated
10.04.2023 made in W.P.No.18927 of 2020. The impugned order
reads as under:-

"Mr.P.V.Ravikumar, learned counsel for petitioner



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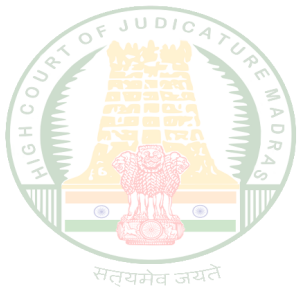
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and Mrs.K.Vasanthamala, learned Government Advocate would submit in one voice that the issue that arises in this writ petition relating to reversal of input tax credit pursuant to cancellation of selling / purchasing registration, is covered in favour of the petitioner.

2. They cite the decision of Apex Court in the case of State of Maharashtra v Suresh Trading Company (1997) 11 SCC 378 and a decision of Division Bench of this Court in the case of Assistant Commissioner (CT) Broadway Assessment Circle, Chennai v Bhairav Trading Company [(2016) 95 VST 315 (Mad)]. In light of the aforesaid, impugned order of assessment is set aside and this writ petition is allowed. No costs."

2. In the said writ petition, the petitioner/respondent herein has challenged the order dated 22.07.2015 in TNVAT/33250021294/2014-15 almost five years later. The said order is extracted hereunder:

"Tvl.Arunnachala Impex Pvt. Ltd., at No.192/237,



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Thambu Chetty Street, Chennai-1 have filed monthly returns for the month of February -2015 under TNVAT Act and CST Acts in Form I and Form 1 respectively .

A scrutiny of the returns for the month of February-15, it was found that they have availed ITC to a tune of Rs.98,30,251/- on a purchase turnover of Rs.6,77,94,700/- from Tvl. Quality Industries whose Registration Certificate has been cancelled by the Registering Authority since the dealers have not filed their returns along with the tax due .

A notice was issued to the dealers proposing reversal of ITC under Sec19(13) of the TNVAT Act-2006 calling for their objections. The dealers have filed their reply in which they have enclosed a copy of the manual returns said to have been filed by Tvl. Quality Industries. But, there is no evidence of proof of payment of tax to the Department by way of signature obtained in the respective circle for having received the payment due nor have they filed any Bank statement to substantiate their claim of payment of tax. Hence, the proposal of reversal is confirmed as below:

Tax due on ITC reversal : Rs.98,30,251.00

Paid : Rs. Nil

Balance : Rs.98,30,251.00

A notice in Form 'O' is issued."

3. The order dated 22..07.2015 precedes a notice, that was



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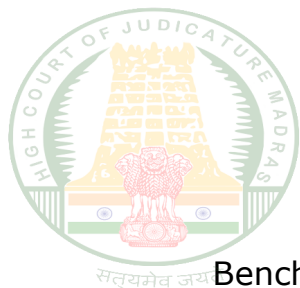
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issued to the respondent herein on 01.06.2015, which was replied on 08.06.2015. The said reply of the respondent herein reads as under:

"We wish to inform that we have purchase during the month of Feb 2015 from Quality Industries are active dealer and we have received the Feb 2015 Form I and Annexure from the dealer, the same has been enclosed herewith for your reference and we also paid CST Tax for the November, 2014 of Rs. 164710/- chq bearing No.000223 Dated: 23.12.2014 has been passed in our account for that I have attached the copy of Bank Statement for your ready reference."

4. Reading the impugned order, the notice and the reply of the respondent herein indicates that the respondent has not furnished any documents to substantiate that indeed there was a sale from the dealer, namely *M/s.Quality Industries*. All that the respondent has stated is that on the date of purchase, the said *M/s. Quality Industries Ltd.* has a valid registration, which was subsisting.

5. The law on this aspect has been settled by the Division



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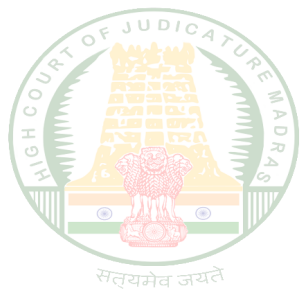
Bench of this Court, rendered in the case of **Sahyadri Industries**

Ltd. vs. State of Tamil Nadu¹. In paragraphs 100 to 109, it has been held as under:-

"100. To an extent we are in agreement with the view of the learned Single Judge in *Vinayaga Agencies v. CCT* [*Vinayaga Agencies v. CCT*, (2013) 60 VST 283 : 2013 SCC OnLine Mad 323] . However, the view cannot be applied universally where the selling dealer continued to exist where there was no transaction of "sale" or that the registration was obtained only for the purpose of facilitating credit of tax being availed without a transaction of sale. We cannot uphold the view in *Vinayaga Agencies v. CCT* [*Vinayaga Agencies v. CCT*, (2013) 60 VST 283 : 2013 SCC OnLine Mad 323] in all cases merely because the registration of the selling dealer was not cancelled if indeed the registration was obtained to create paper transaction without actual sale. The burden to prove that there was indeed a transaction of sales is with the registered dealer availing credit. Till such burden is proved, the credit availed under the proviso to Section 19(1) of the T.N. Vat Act, 2006 can be denied.

101. We have to state that ratio of this Court both in *Jinsasan Distributors v. CTO* [*Jinsasan Distributors v. CTO*, (2013) 59 VST 256

1 2023 SCC Online Mad 7905



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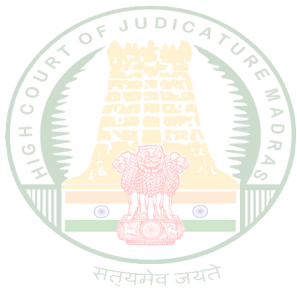


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: 2012 SCC OnLine Mad 4633] and *Vinayaga Agencies v. CCT* [*Vinayaga Agencies v. CCT*, (2013) 60 VST 283 : 2013 SCC OnLine Mad 323] are no longer a good law in the light of the recent decision of the court in *State of Karnataka v. Ecom Gill Coffee Trading (P) Ltd.* [*State of Karnataka v. Ecom Gill Coffee Trading (P) Ltd.*, (2023) 111 GSTR 1 : 2023 SCC OnLine SC 248] , dated 13-3-2023 in Civil Appeal. No. 230 of 2023. We shall deal with the same in due course of discussion.

102. The ratio in *Vinayaga Agencies v. CCT* [*Vinayaga Agencies v. CCT*, (2013) 60 VST 283 : 2013 SCC OnLine Mad 323] cannot be applied in all cases. Likewise, the ratio in *Jinsasan Distributors v. CTO* [*Jinsasan Distributors v. CTO*, (2013) 59 VST 256 : 2012 SCC OnLine Mad 4633] , cannot be applied any longer in view of the recent decision of the Supreme Court in *State of Karnataka v. Ecom Gill Coffee Trading (P) Ltd.* [*State of Karnataka v. Ecom Gill Coffee Trading (P) Ltd.*, (2023) 111 GSTR 1 : 2023 SCC OnLine SC 248] , dated 13-3-2023 in Civil Appeal No. 230 of 2023.

103. While placing reliance on the aforesaid decision of the Supreme Court in *State of Maharashtra v. Suresh Trading Co.* [*State of Maharashtra v. Suresh Trading Co.*, (1997) 11 SCC 378 : (1998) 109 STC 439] , the court in



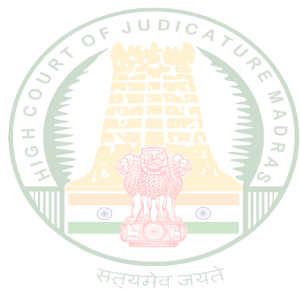
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Jinsasan Distributors v. CTO [Jinsasan Distributors v. CTO, (2013) 59 VST 256 : 2012 SCC OnLine Mad 4633] , failed to note the expression in Section 19(15) of the T.N. Vat Act, 2006 which specifically deals with the situation. Section 19(15) in the T.N. Vat Act, 2006 is an innovation which was not contemplated under Section 70 of the Karnataka Value Added Tax Act, 2003. The said decision of a learned Single Judge of this Court, has been followed in the past.

104. If there is a cancellation of registration, the assessing officer can call upon the dealer to repay to the input tax credit availed and utilised if indeed there was no evidence of sale. It may result in denial in the credit. However, it cannot be helped, where registration itself was obtained by such dealer to facilitate input tax credit being availed on such bogus invoice without a corresponding transaction of sale.

105. Therefore, the decision of the learned Single Judge in Jinsasan Distributors v. CTO [Jinsasan Distributors v. CTO, (2013) 59 VST 256 : 2012 SCC OnLine Mad 4633] , placing reliance on State of Maharashtra v. Suresh Trading Co. [State of Maharashtra v.\ Suresh Trading Co., (1997) 11 SCC 378 : (1998) 109 STC 439] cannot be held to have an universal application in all cases of cancellation of VAT registration of the



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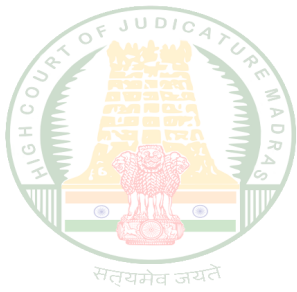
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selling dealer with retrospective date, if registration itself was obtained only to facilitate bogus input tax credit being claimed availed and utilised without actual transaction of "sale" and supply of goods to cheat the revenue as is contemplated under Section 19(13) of the T.N. Vat Act, 2006.

106. Therefore, a registered dealer claiming input tax credit has to discharge the burden of proof required to be discharged under Section 17(2) of the T.N. Vat Act, 2006 by showing documents to prove that indeed there was a transaction of sale and payment of amount was made for supply made to the dealer who supplied the goods.

107. Thus, it was incumbent on the part of a registered dealer like petitioner-appellants availing input tax credit to prove that indeed a transaction of "sale" had taken place. They should not only preserve but also produce collateral evidence in the form of transport documents, such lorry receipts or consignment note, etc. When called upon failing which it cannot be said they have discharged the burden of proof required to be discharged under Section 17(2) of the T.N. Vat Act, 2006.

108. In absence of such document, where there was also a failure on the part of the dealer which raised invoice on the petitioner-appellants



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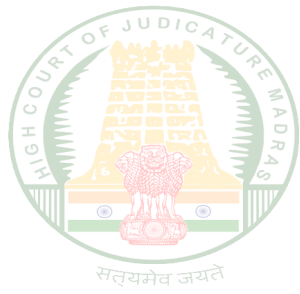
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for the goods allegedly supplied, either on account of cancellation of registration or on account of such dummy dealers have disappeared, input tax credit availed and utilised has to be repaid together with interest under the scheme of the T.N. Vat Act, 2006.

109. Till such time the burden of proof is properly discharged, the credit availed has to be held to be provisional under the scheme of Section 19(16) of the T.N. Vat Act, 2006 and the assessing officer is empowered to revoke the credit if a dealer fails to discharge the burden."

6. The ratio of the said decision will apply to the facts of this case. Under these circumstances, we are constrained to set aside the impugned order and remit the matter back to the Assessing Officer in light of the decision of this Court rendered in the case of **Sahyadri Industries Ltd.** (cited *supra*).

7. The respondent herein is entitled to produce all documents and is also entitled to file a detailed submission to the notices that were issued prior to the order dated 22.07.2015, which was the subject matter of consideration in W.P.No.18927 of 2020.



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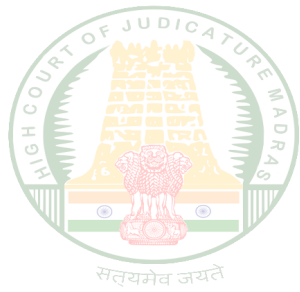
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8. The writ appeal, accordingly, stands disposed of. There shall be no order as to costs. Consequently, C.M.P.No.25358 of 2024 is closed.

(R.S.K., J.) (C.S.N, J)
18.11.2024

Neutral Citation:Yes/No

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R. SURESH KUMAR, J.
AND
C. SARAVANAN, J.

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