courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 22/08/2026

(2015) 04 MAD CK 0370

In the Madras High Court

Case No : Writ Petition Nos. 9704 to 9710 of 2015

Thiruneelakandar Agencies — APPELLANT

Vs

The Assistant Commissioner (CT) Shavapet Circle — RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 17, 19, 19(1), 22 (2)

Citation : (2015) 04 MAD CK 0370

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Advocate : P. Rajkumar, for the Appellant; Kanmani Annamalai, Additional Government Pleader (T), Advocates for the Respondent

Final Decision : Disposed off

Judgement

S. Vaidyanathan, J—Mr. Kanmani Annamalai, learned Additional Government Pleader (Taxes) takes notice for the respondent.

2. The petitioner has come forward with these writ petitions, challenging the orders of the respondent dated 23.02.2015.

3. The learned counsel for the petitioner submitted that the petitioner''s place of business was inspected by the Enforcement Wing Officers and on verification of purchases made from other dealer and on verification of the monthly returns and the departmental website it was noticed that there was variation with references to purchases made. Therefore, the respondent proposed to reverse the Input Tax Credit (ITC). For the notices issued by the respondent for proposing to reverse ITC, detailed replies was given by the petitioner and the respondent has passed the impugned orders confirming the proposal on 23.02.2015.

4. The learned counsel for the petitioner further submitted that the reasons given by the petitioner was not accepted on the ground that the petitioner had made excess input tax credit on the purchase whereas the sellers have reported less sales in their returns and the time sought for is only to drag on the matter.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/thiruneelakandar-agencies-appellant...

5. The learned counsel for the petitioner further contended that the petitioner''s vendors were all registered dealers on the file of the department and the same was available with the department and the department ought to have taken action against the vendors for not remitting the tax collected by them. Without doing so, the department could not deny the request made by the petitioner.

6. In support of the above contention, the learned counsel for the petitioner relied upon a decision of this Court in the case of Althaf Shoes (P) Ltd. Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai-6, (2012) 50 VST 179 , wherein it is held as follows:

"...The mere fact that the Department had not made an assessment on the dealer''s vendor, per se, could not stand in the way of the assessing officer considering the claim of the dealer under section 19 of the Act. Going by section 17 which provided that the burden on the purchasing dealer rested to the extent of showing that he was not liable to tax under the Act and read in the context of the fact that the petitioner-dealer had given his sellers'' TIN number and had also produced the invoices evidencing the purchase of materials paying tax, the Department could not successfully canvass its claim that the petitioner was not entitled to have the refund. It was admitted that the petitioner''s vendors were all registered dealers on the files of the Department and that the petitioner had also given the TIN number of these vendors. When such particulars were available, it was for the Department to take necessary action against the vendors, who had not remitted tax collected by them to the State. Without taking recourse to that, the Department could not deny the claim of the petitioner".

7. The learned counsel for the petitioner also relied on another decision of this Court in the case of Sri Vinayaga Agencies Vs. Assistant Commissioner (CT) and Another, (2013) 60 VST 283 , wherein, it is held as follows:--

"...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, the petitioner''s case squarely fell under the proviso to section 19(1) of the Act. 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 liable to be set aside".

So also the decision rendered by this Court in W.P. Nos. 25996 to 25998 of 2014 dated 17.10.2014, wherein this Court, by referring the above two decisions, in paragraph Nos. 5 and 6, has held as follows:--

"5. This Court in the case of Althaf Shoes (P) Ltd. Vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai-6, (2012) 50 VST 179 held that

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/thiruneelakandar-agencies-appellant…

a perusal of rule 10 of the Tamilnadu Value Added Tax Rules, 2007 read along with Section 19(1) of the Tamilnadu Value Added Tax Act, 2006 made it clear that so long as the purchasing dealer had complied with the requirements as given under rule 10(2), the claim of the purchasing dealer could not be denied by the Department. The circular issued by the Commissioner clearly stated that so long as the vendor was found to be a registered dealer on the files of the Department, the claim of the dealer for refund could not be rejected nor delayed. The mere fact that the Department had not made an assessment on the dealer''s vendor, per se, could not stand in the way of the assessing officer considering the claim of the dealer under Section 19 of the Act. Going by Section 17 which provided that the burden on the purchasing dealer rested to the extent of showing that he was not liable to tax under the Act and read in the context of the fact that the petitioner-dealer had given his sellers TIN number and had also produced the invoices evidencing the purchase of materials paying tax, the Department could not successfully canvass its claim that the petitioner was not entitled to have the refund. It was admitted that the petitioner''s vendors were all registered dealers on the files of the Department and that the petitioner had also given the TIN number of these vendors. When such particulars were available, it was for the Department to take necessary action against the vendors, who had not remitted tax collected by them to the State. Without taking recourse to that, the Department could not deny the claim of the petitioner.

6. In the light of the above decision, the observation made by the respondent in the impugned order is wholly unsustainable. Further in the case of Sri Vinayaga Agencies Vs. Assistant Commissioner (CT) and Another, (2013) 60 VST 283 , this Court held that there is no power with the assessing authority to revoke input-tax credit on ground selling dealer has not paid tax and 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, the petitioner''s case squarely fell under the proviso to section 19(1) of the Act. 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 liable to be set aside. That sub-section (16) of section 19 states that the input-tax credit availed is provisional. It however, does not empower the authority to revoke the input-tax credit availed of on a plea that the selling dealer has nor paid the tax. It only relates to incorrect, incomplete or improper claim of input-tax credit by the dealer".

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/thiruneelakandar-agencies-appellant…

8. Heard the learned Additional Government Pleader (Taxes) for the respondent.

9. The learned Additional Government Pleader (Taxes) appearing for the respondent is unable to refute the factual legal submissions. Hence, I have no other option except to set aside the impugned orders and remit the matters back to the authority concerned to consider the case of the petitioner afresh on merits.

10. In the result, the impugned orders are set aside and the matters are remitted back to the authority concerned for passing appropriate orders afresh on merits and in accordance with law.

11. It is made clear that the petitioner is directed to appear in person and produce the documents required by the respondent duly attested by the seller on or before 30.04.2015 and on receipt of such documents, the respondent is directed to consider the same and after conducting enquiry and giving the petitioner an opportunity of being heard on 30.04.2015, the respondent shall pass appropriate orders on merits and in accordance with law. On 30.04.2015, if the petitioner fails to avail the opportunity for any reason whatsoever, the authority is empowered to pass orders on merits and in accordance with law, without being influenced by the orders that are set aside by this Court. These writ petitions are disposed of with the above direction. No costs. Connected miscellaneous petitions are closed.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/thiruneelakandar-agencies-appellant…