

(2012) 11 MAD CK 0012

Madras High Court

Case No: Writ Petition No's. 12305, 12306, 28739, 26800, 25013, 25014, 25225, 29010 to 29012 and 24656 to 24661 of 2012 M.P. No's. 1 of 2012 and W.P. No. 29929 of 2011 M.P. No. 2 of 2011

Jinsasan Distributors

APPELLANT

Vs

The Commercial Tax Officer (CT)
Chintadripet Assessment Circle
No. 62, Cathedral Road Chennai
600086

RESPONDENT

Date of Decision: Nov. 22, 2012

Acts Referred:

- Tamil Nadu Value Added Tax Act, 2006 - Section 19, 19(1), 19(15), 19(5), 2(24)

Citation: (2013) 1 MLJ 157 : (2013) 59 VST 256 : (2013) WritLR 190

Hon'ble Judges: R. Sudhakar, J

Bench: Single Bench

Advocate: P.R. Kumar in W.P. Nos. 12305, 12306, 25013 and 25014 of 2012, Mr. R. Kumar in W.P. No. 28739 of 2012, Mr. C. Saravanan in W.P. No. 26800 of 2012, Mr. R. Mahadevan for M/s. Maha Associates in W.P. Nos. 25225 and 29010 to 29012 of 2012, Mr. V. Sundareswaran in W.P. Nos. 24656 to 24661 of 2012 and Ms. C. Rekha Kumari in W.P. No. 29929 of 2011, for the Appellant; A.R. Jaya Prathap, Government Advocate (Tax), for the Respondent

Final Decision: Dismissed

Judgement

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Honourable Mr. Justice R. Sudhakar

1. This batch of writ petitions is taken up for disposal by consent of the counsel for the petitioners and Mr. A.R. Jaya Prathap, learned

Government Advocate (Tax), as all the batch of cases relate to a common issue as to the liability of the petitioners, who are registered dealers, to

repay the input tax credit availed by them on lawful purchase of goods from another dealer. The brief facts of the case are as follow: Each one of the petitioners in this case is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 (for brevity, "the TNVAT Act, 2006") and they are engaged in purchase and sale of tax paid goods and in some cases they are manufacturers, who use the tax paid goods purchased from other dealers. Each one of the petitioners/dealers in this case have availed input tax credit on the amount of tax paid under the TNVAT Act, 2006 by the registered selling dealer on purchase of taxable goods specified in Schedule-I. This benefit is availed by the petitioners herein u/s 19 of the TNVAT Act, 2006.

2. Section 2(24) of the TNVAT Act, 2006 defines "input tax" as follows:

Section 2(24) input tax means the tax paid or payable under this Act by a registered dealer to another registered dealer on the purchase of goods including capital goods in the course of his business.

3. Section 3 of the TNVAT Act, 2006 is the charging section on sale of goods. The petitioners in all these cases have purchased goods from registered dealers and availed input tax credit on the amount of tax paid. Subsequently, the department proceeded to take action against the selling dealers, who sold goods to the petitioners, for one or other reason and cancelled their registration certificates. Based on the cancellation of the registration certificates issued to the selling dealers, the department has issued notices in some cases calling upon the petitioners to show cause as to why input tax credit should not be reversed; in some cases passed revised assessment orders reversing the input tax credit availed; and in W.P.No. 12305 of 2012, a provisional assessment order has been passed reversing the input tax credit availed.

4. All the petitioners have challenged the notices, revised assessment orders and provisional assessment order on the plea that the reversal of input tax credit is per se erroneous and the basis on which the input tax credit has been reversed or sought to be reversed is based on cancellation of the registration certificates issued to the selling dealers and that cancellation of registration certificates is passed with retrospective effect and, therefore,

it cannot bind the petitioners. The input tax credit was availed on the basis of valid documents and the benefit given cannot be reversed in this manner. In support of the plea, the petitioners relied upon a decision of the Supreme Court in *State of Maharashtra v. Suresh Trading Company*, (1998) 109 STC 439.

5. Heard Mr. A.R. Jaya Prathap, learned Government Advocate (Tax) appearing for the respondents, who stated that Section 19(15) of the TNVAT Act, 2006 provides for reversal of input tax credit consequent to the cancellation of the registration certificate of the selling dealer.

Section 19(5) of the TNVAT Act, 2006 reads as follows:

Section 19(15): Where a registered dealer has purchased any taxable goods from another dealer and has availed input tax credit in respect of the said goods and if the registration certificate of the selling dealer is cancelled by the appropriate registering authority, such registered dealer, who has availed by way of input tax credit, shall pay the amount availed on the date from which the order of cancellation of the registration certificate takes effect. Such dealer shall be liable to pay, in addition to the amount due, interest at the rate of one and a quarter per cent, per month, on the amount of tax so payable, for the period commencing from the date of claim of input tax credit by the dealer to the date of its payment.

6. He submitted that on a plain reading of the above, as and when the appropriate registering authority cancels the registration certificate of the selling dealer, the registered dealer who purchased any taxable goods from such selling dealer and availed input tax credit is bound to pay the amount so availed. His further contention is that the cancellation of the registration certificate would take effect from the date as specified in the order and that is how the provision should be interpreted.

7. The fact that the petitioners herein/assesseees under the TNVAT Act have purchased goods from registered dealers on paying the input tax is not in dispute. The fact that they have availed input tax credit in terms of Section 19(1) of the TNVAT Act, 2006 is also not in dispute and in all these cases the assessment orders have been passed based on documents furnished. The cause of action for issuing the notices for reversal of input tax

credit or the order revising the assessment is based on the cancellation of the registration certificates of the selling dealers, who sold the goods to

the petitioners herein. It is also not in dispute that the registration certificates of the selling dealers have been cancelled with retrospective effect.

That appears to be the one and only ground for initiating the action and therefore the challenge.

8. The question now to be considered is whether the cancellation of the registration certificates of the selling dealers with retrospective effect will

entitle the department to reverse the input tax credit already availed by the petitioners/assesseees consequent to assessment orders passed by

competent authority based on records.

9. On the sale and purchase of goods by the registered dealers, in terms of Section 3 of the TNVAT Act, 2006 the tax payable on such sale has

been paid and is supported by statutory records like invoices, etc. and the same is not in dispute. At the time when the sale was effected by the

selling dealers to the petitioners, the registration certificates were valid. On the basis of the sale documents, input tax credit was availed by all the

petitioners/assesseees based on assessment made by the competent authority. It therefore follows that as and when the department seeks to cancel

the registration certificates of the selling dealers, the provisions of Section 19(15) of the TNVAT Act, 2006 will come into operation. The

petitioners/assesseees in these cases will be liable to pay the input tax credit availed on taxable goods if the goods have been purchased from

dealers whose registration certificates have been cancelled by the appropriate registering authority. There is no dispute on this proposition. What is

the effect of cancellation of the registration certificate and how and when the reversal of the input tax credit will take effect is the question to be

considered.

10. Section 19(15) of the TNVAT Act, 2006 provides that the registered dealer who availed the input tax credit should pay the amount availed on

the date from which the order of cancellation of the registration certificate takes effect. In all these cases, without dispute, the orders cancelling the

registration certificates of the selling dealers is given with retrospective effect, That is to say, after the assessment orders have been passed granting

the benefit of input tax credit.

11. Insofar as the cancellation of the registration certificates of the selling dealers is concerned, it is for those 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 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 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 u/s 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

based on valid documents.

12. An almost identical issue was considered by the Supreme Court in *State of Maharashtra v. Suresh Trading Company*, (1998) 109 STC 439.

In that case, the respondents, who were registered dealers under the Bombay Sales Tax Act, 1959, purchased goods during the period from

1.1.1967 to 31.1.1967 from one Sulekha Enterprises Corporation, who is also a registered dealer under the Bombay Sales Tax Act, 1959. The

respondents before the Supreme Court resold the goods and claimed certain benefits. That was disallowed by the Sales Tax Officer on the ground

that the registration certificate of M/s. Sulekha Enterprises Corporation was cancelled on 20.8.1967, with effect from 1.1.1967. The claim of the

respondents therein/the assesseees for deduction of the turnover of sales as above was declined and penalty was also imposed. The assesseees failed

before the appellate authority as well as the Maharashtra Sales Tax Tribunal. The High Court however reversed the decision and upheld the claims

of the assessee, holding that disallowing the deductions claimed by the respondents would amount to tax on transactions which were otherwise not taxable. The Supreme Court, while dismissing the appeals filed by the Revenue, held as follows:

4. The High Court answered the question in the negative and in favour of the respondents. The High Court noted that the effect of disallowing the deductions claimed by the respondents was, in substance, to tax transactions which were otherwise not taxable. The condition precedent for becoming entitled to make a tax-free resale was the purchase of the goods which were resold from a registered dealer and the obtaining from that registered dealer of a certificate in this behalf. This condition having been fulfilled, the right of the purchasing dealer to make a tax-free sale accrued to him. Thereafter to hold, by reason of something that had happened subsequent to the date of the purchase, namely, the cancellation of the selling dealer's registration with retrospective effect, that the tax-free resales had become liable to tax, would be tantamount to levying tax on the resales with retrospective effect.

5. In our view, the High Court was right. A purchasing dealer is entitled by law to rely upon the certificate of registration of the selling dealer and to act upon it. Whatever may be the effect of a retrospective cancellation upon the selling dealer, it can have no effect upon any person who has acted upon the strength of a registration certificate when the registration was current. The argument on behalf of the department that it was the duty of persons dealing with registered dealers to find out whether a state of facts exists which would justify the cancellation of registration must be rejected. To accept it would be to nullify the provisions of the statute which entitle persons dealing with registered dealers to act upon the strength of registration certificates.

(Emphasis supplied)

13. The Supreme Court in the above case has clearly held that the retrospective cancellation of the registration certificate of the selling dealer can have no effect on the person who acted upon the strength of the registration certificate when it was in force. The Supreme Court further rejected

the department's argument that duty is cast on the person who is dealing with the registered dealer to find out whether the registration certificate is valid or cancelled, by stating that such a plea would be against the provisions of the statute. In the present case, it is not in dispute that the registration certificates of the selling dealers have been cancelled with retrospective effect and, therefore, to reverse the input tax credit on the plea that registration certificates have been cancelled with retrospective effect cannot be countenanced. Whatever benefits that has accrued to the petitioners based on valid documents in the course of sale and purchase of goods, for which tax has been paid cannot be declined. The transaction that took place when the registration certificates of the selling dealer were in force cannot be denied to the petitioners/assesseees on the above plea. This is contrary to the law laid down by the Supreme Court in the above stated case. For the foregoing reasons, the notices, revised assessment orders and the provisional assessment order, insofar as it seeks to deny the benefit of input tax credit to the petitioners/assesseees only on the ground that the registration certificates of the selling dealers have been cancelled with retrospective effect, are set aside. These writ petitions are allowed, as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.