

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF JANUARY, 2018

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

W.P.Nos. 56837-848/2016(T-RES)

BETWEEN

M/S. J.C.INDUSTRIES
#B-90, 2ND FLOOR,
3RD MAIN, D.DEVARAJ URS
TRUCK TERMINAL
INDUL. SUBURB
YESWANTHPUR
BANGALORE-560 022
REP. BY ITS PARTNER
SRI HEREN N. SANGHAVI,
AGED 55 YEARS

...PETITIONER

(BY SRI K.M.SHIVAYOGISWAMY, ADV.)

AND

1. STATE OF KARNATAKA
BY ITS SECRETARY
DEPARTMENT OF FINANCE
VIDHANA SOUDHA
BANGALORE-560 001.
2. THE DEPUTY COMMISSIONER
OF COMMERCIAL TAXES
(AUDIT) 6.7, VAT DVN.-6,
KIADB BUILDING, 3RD FLOOR,
14TH CROSS, PEENYA,
BANGALORE-560 058.

...RESPONDENTS

(BY SRI T.K.VEDAMURTHY, AGA)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED REASSESSMENT ORDER PASSED BY THE R-2 AUTHORITY IN RELATION TO THE ASSESSMENT PERIOD 2012-13 UNDER THE PROVISIONS OF THE KVAT ACT DATED 20.10.2016 AND THE CONSEQUENTIAL DEMAND NOTICE ISSUED THERETO VIDE ANNEXURE-F AND ETC.

THESE PETITIONS COMING ON FOR PRLY. HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Mr.K.M.Shivayogiswamy, Adv. for Petitioner.
Mr. T.K.Vedamurthy, AGA for Respondents.

The petitioner-**M/s. J.C.Industries** has filed this writ petition under Articles 226 and 227 of the Constitution of India challenging the impugned **Re-Assessment Order u/s.39(1)** of the **Karnataka Value Added Tax Act, 2003 Annexure-F** dated **20.10.2016** for the Tax Period April 2012 to March 2013.

2. The only ground raised before this Court is the alleged breach of principles of natural justice in as

much as the adverse material was not confronted to the petitioner and merely on the basis of a Investigation Report, the disallowance of **'Input Tax Credit'** was made by the Assessing Authority which too was not supplied to the petitioner-assessee and he was not given an opportunity to controvert the said adverse material namely the alleged Selling Dealer M/s.Rajguru Impex was a bogus dealer or not.

3. Upon issuance of notices, the Respondents-Department has filed its Statement of Objections along with certain documents and it has been stated in para 4 of the said Statement of Objections that that said selling dealer M/s.Rajguru Impex was a bogus and non-existing dealer indulging in only giving "Sales Invoices" and since there was no actual movement of the goods and sales by the said M/s.Rajguru Impex to the petitioner-assessee-dealer, who was engaged in the business of sale of Aluminium False Ceiling, Wall

Cladding etc. and had claimed Input Tax Credit *inter alia* on the alleged purchases of PVC Laminates, Fire rated door plain glass, pre-laminated sheets and Mineral Fiber Tiles etc., from M/s.Rajguru Impex. But upon investigation by the Respondent-Department, M/s.Rajguru Impex was found to be a non-existing and bogus dealer and therefore Input Tax Credit could not have been given to the petitioner-assessee, hence the impugned Re-Assessment Order was passed by the Assessing Authority raising the demand.

4. The relevant extract of para-4 of the Statement of Objections is quoted below for ready reference:

*“4. It is respectfully submitted that on verification of the books of accounts, it is observed that the petitioner has effected purchases of PVC laminate, fire rated door plain glass, pre-laminated sheet, and mineral fiber tiles from **M/s.Rajguru Impex**, No.17, 17/1, Om Nivas, 4th Cross, 5th Main,*

Gandhinagar, Bangalore having **TIN 29920608860**. The purchases made were verified with reference to the Report sent by JCCT(A), DVO-06, Bangalore vide T.No.2440/13-174 dt.12.12.2013 which was received from the Additional Commissioner of Commercial Taxes (I&C), Bangalore vide Report dated 20.09.2013 and 21.11.2013 in which it **has reported that M/s.Rajguru Impex is a bogus dealer who is indulging in bill trading and obtained registration in order to claim the benefit of Input Tax Credit by furnishing false invoices**. Since the Petitioner has effected purchases from the bogus dealer, the input tax claimed was proposed to disallow by issuing a proposition notice on the petitioner. Responding to the notice, the petitioner had submitted a reply letter in which he sought an opportunity to cross-examine the selling dealer who has filed the returns to ascertain whether there may be suppression at their level. Considering the request of the petitioner, an endorsement dated 27.09.2016 was issued and posted for hearing 04.10.2016 at

11.00 AM in this office. **The endorsement issued on the seller was returned as “Addressee left”.** However, pursuant to the endorsement issued, the petitioner was alone appeared and requested to furnish the Report received from the Additional Commissioner of Commercial Taxes (I&C), Bangalore. As sought by the petitioner, the investigating Report was furnished and same was gone through the Report by him and re-iterated same grounds of reply to the undersigned as stated in the reply letters filed. The reply letters filed were carefully examined with reference to the documents filed. The contentions made in his reply letters were rejected for the reason that mere issuance of copies of tax invoices, E-sugam details, ledger and bank statement do not constitute sale. For effecting actual sales, goods must have been moved from the hands of seller to the hands of the buyer. Unless there is transfer of property in goods, any transaction carried out which does not falls within the meaning of sale. From this it is clear that the petitioner purchased the goods from bogus dealer and

produced the false invoice in order to claim the benefit of Input Tax Credit even though the goods under question has not actually been moved from supplier to buyer. Given fact that the petitioner has knowingly produced the false invoices which are not genuine, however, he had stated to be paid the input tax on said purchases on the strength of false invoices. Mere furnishing or producing tax invoices with TIN number, making payment through cheques do not complete the process of sale unless goods moved from the seller and purchaser. It is therefore, such purchases do not qualify for Input Tax Credit. There is a well-known settled principle of law by the seller. There must be fund (input tax in this case) for refund (again input tax for setoff from the output tax payable by the petitioner). Thus, the petitioner who has knowingly produced false invoices in order to seek undue Input Tax Credit on purchases made by the bogus dealer.”

5. Mr.K.M.Shivayogiswamy, learned counsel for the petitioner-assessee has vehemently submitted before the Court that neither any such Investigation Reports were made available to the petitioner though they were made available to be perused during the course of the assessment proceedings nor there was any such specific proposition notice for disallowing the Input Tax Credit in the hands of the petitioner-assessee and therefore the impugned Re-Assessment Order deserves to be quashed.

6. Having heard the learned counsels for the parties, this Court is satisfied that the writ jurisdiction cannot be invoked by the petitioner-assessee in these circumstances.

7. On a perusal of the **Proposition Notice Annexure-A** dated **08.09.2016** itself it is clear that the Respondent-authority has specifically mentioned the purported disallowance of Input Tax Credit to an extent

of **Rs.1,22,910/-** and **Rs.95,984/-** in respect of the purchase invoices for the alleged sales of goods by M/s.Rajguru Impex to the petitioner-assessee. It is also stated in the **Proposition Notice** itself that the said selling dealer M/s.Rajguru Impex neither filed any Returns in the Department and therefore construing the same to be a bogus dealer the Input Tax Credit was therefore proposed to be disallowed in the hands of the petitioner-assessee. The Statement of Objections quoted above also indicates *prima facie* that the Respondent-Assessing Authority upon due investigation into the non-existence of the said selling dealer, had come to the conclusion that the selling dealer M/s.Rajguru Impex existed only on papers and there were no actual sales of goods by M/s.Rajguru Impex to the petitioner-assessee and therefore, the purported Sales Invoices for which Input Tax Credit were claimed as deduction in the hands of the petitioner-assessee,

such Input Tax Credit cannot be allowed to the petitioner-assessee.

8. Once the allegation was specifically made in the Proposition Notice about the selling dealer M/s.Rajguru Impex being a 'bogus' dealer or a 'ghost' dealer and the Investigation Report was also allowed to be perused by the Assessing Authorities and an Endorsement issued to the said alleged selling dealer M/s.Rajguru Impex was also shown to have been returned back with a postal Endorsement "Addressee left", it was sufficient discharge of burden by the Revenue Authorities to disallow such Input Tax Credit in respect of the Sales Invoices purportedly raised by M/s.Rajguru Impex and the onus entirely shifted on the petitioner-assessee, to remove such suspicion, by producing the said Dealer, if at all it had actually existed and owned by some human being by his

examination and cross-examination during the assessment proceedings by the Department authority.

9. The burden in such cases could not be assumed to be lying upon the Assessing Authority in this regard, since the enquiry conducted by them apparently resulted in the conclusion that such a dealer did not even exist. There cannot be said to be any breach of principles of natural justice in the course of such assessment proceedings resulting in the disallowance of the Input Tax Credit in the hands of the petitioner-assessee, if the selling dealer himself is shown to be a non-existing dealer from entity. Mere production of papers, which could be a hand work of the petitioner-assessee himself, could not be allowed to be claimed such Input Tax Credit in the hands of the petitioner-assessee, unless on due verification and cross check, such tax paid by the selling dealer on the actual sale of such goods to the petitioner-assessee was

shown to have been deposited with the State Treasury by such selling dealer.

10. The State cannot be expected to give credit of Input Tax Credit unless on a verification that the selling dealer is not only shown to be existing but such actual sales attracting such liability is established in the hands of the selling dealer and such tax has been deposited by the selling dealers with the State in due discharge of his obligations under the provisions of the KVAT Act, 2003 or at least he exists to undertake the discharge of such tax obligation on his part. Such false Input Tax Credit given in the hands of the purchasing dealer like the present petitioner-assessee cannot only result in false credits to be allowed in the hands of the dealers which causes loss to the public revenue to the State, but in such cases, the Revenue Authorities are of course empowered to undertake such verification process to its logical end and the petitioner-assessee cannot be held

entitled to cut short such process of investigation particularly by invoking the writ jurisdiction of this Court.

The writ petitions are thus misconceived and the same are liable to be dismissed and accordingly **dismissed.** No costs.

**Sd/-
JUDGE**

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