

Bimal Jain

FCA, FCS, LLB, B.Com (Hons)

- Assessee cannot be asked to reverse input tax credit due to non-payment of taxes by the selling dealer

Sri Lakshmi Textiles Vs. the Commissioner of Commercial Taxes and Others [2016 (1) TMI 329 - MADRAS HIGH COURT]

Facts:

Sri Lakshmi Textiles (“**the Petitioner**”) is a partnership firm engaged in the business of inner garments and textiles registered under Tamil Nadu Value Added Tax Act, 2006 (“**TN Vat Act**”). The Petitioner was regularly filing the VAT return and paying the VAT liability after adjusting the corresponding input tax credit. For the Assessment Year 2013-2014, the Petitioner had reported total turnover and taxable turnover of Rs. 2,02,88,151/- and Rs. 15,98,693/- respectively in his return.

The Department alleged that because some of the selling dealer of the Petitioner had not paid the tax, the Petitioner is required to reverse the corresponding input tax credit and further sought to levy penalty under Section 27(3) of the TN VAT Act on the Petitioner.

Held:

The Hon’ble High Court of Madras relied upon the decision in the case of ***Sri Vinayaga Agencies Vs. the Assistant Commissioner (Ct), Chennai and another [(2013) 60 VST 283 (Mad)]*** and held that when the fact of Petitioner paying the taxes to his supplier is not under dispute, the Petitioner cannot be compelled to reverse the input tax Credit due to non-payment of VAT liability by the selling dealer.

- Purchase tax cannot be levied on stock transfer from one State to another for eventual export of goods as it is sale in the course of export

A.B. Mauri India (P.) Ltd. Vs. Deputy Commercial Tax Officer, Ranigunz Circle, Hyderabad [(2016) 65 taxmann.com 135 (Andhra Pradesh)]

Facts:

A.B. Mauri India (P.) Ltd. (“**the Petitioner**”), engaged in trading of yeast, bakery ingredients and chillies, was having multistate branches including one at the Special Economic Zone Kakkanad, Cochin in the State of Kerala, and another in Secunderabad in the State of Andhra Pradesh. The substantial part of the business was direct export of chillies to foreign countries through Cochin branch.

As a modus operandi, the Secunderabad branch of the Petitioner purchased chillies from farmers i.e. unregistered dealer and from the market i.e. registered dealer. Thereafter it was transferred to Cochin branch by way of stock transfer against Form F for exporting.

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However, the Assessing Authority, Secunderabad sought to levy Purchase tax in terms of Section 4(4)(iii) of the AP VAT Act on the value of chillies purchased from farmers. The contention of the Petitioner that purchase of chillies by the Secunderabad branch constituted purchase in the course of export out of territory of India falling under Section 5(1) of CST Act and, therefore, State of Andhra Pradesh lacked jurisdiction to levy Purchase tax in view of constitutional prohibition in Article 286(1)(b) of the Constitution was set aside.

Held:

The Hon'ble High Court of Andhra Pradesh held that as long as the chillies were transferred from Secunderabad branch to Cochin branch, which had been exported and the conditions enumerated in Section 5(1) of the CST Act are satisfied, then the stock transfer from one branch to another for its eventual export cannot be subjected to tax in terms of Section 4(4)(iii) of AP VAT Act, as it is a sale in the course of export.

Hope the information will assist you in your Professional endeavours. In case of any query/information, please do not hesitate to write back to us.

Thanks & Best Regards,

Bimal Jain

FCA, FCS, LLB, B. Com (Hons)

Author of a book on GST, titled, "GOODS AND SERVICES TAX – INTRODUCTION AND WAY FORWARD" (1st Edition)

A2Z TAXCORP LLP

Tax and Law Practitioners

Delhi:

Flat No. 34B, Ground Floor,

Pocket – 1, MayurVihar Phase-1

Delhi – 110091 (India)

Mobile: +91 98106 04563; E-mail: bimaljain@hotmail.com

Bimal Jain

FCA, FCS, LLB, B.Com (Hons)

Tel: +91 11 22757595/ 42427056

Allahabad:

B2-3/4-31 Sarojani Apartments

Sarojani Naidu Marg

Allahabad - 211001

Chandigarh:

H. No. 908, Sector 12-A,

Panchkula, Haryana – 134115

Kolkata:

Ist Floor, 10 R G Kar Road

Shyambazar, Kolkata – 700 004

Email: bimaljain@hotmail.com

Web: www.a2ztaxcorp.com

LinkedIn: <https://in.linkedin.com/pub/bimal-jain/14/601/4b4>

Face book: <https://facebook.com/bimal.jain.90>

Twitter: <https://twitter.com/JainTax>

YouTube: <https://www.youtube.com/channel/UCp0tT5ShjB4KHJRSIPc3t5w>

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Mobile: +91 98106 04563; E-mail: bimaljain@hotmail.com

Bimal Jain

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