

(2011) 10 MAD CK 0133

In the Madras High Court

Case No : Writ Petition No's. 14349 and 14350 of 2011 and M. P. No's. 1 and 1 of 2011

Althaf Shoes (P) Ltd.

APPELLANT

Vs

Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai-6

RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 — Section 17, 18(2), 19, 19(1), 19(19)

Citation : (2012) 50 VST 179

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : S. Ramanathan, for the Appellant; R. Sivaraman, Special Government Pleader (T), for the Respondent

Judgement

Mrs. Chitra Venkataraman J.

1. The petitioner has sought for writ of certiorari to quash the proceeding dated May 24, 2011. The petitioner is a dealer and exporter of finished leather and shoe apparel. In respect of the export made, the petitioner claimed refund of ITC amounting to Rs. 11,59,936 in form W for the month of August, 2007 as per section 18(2) of the Tamil Nadu Value Added Tax Act, 2006. Originally, the said claim was allowed by the respondent in his order dated April 30, 2008. Thereafter, a notice was issued on January 11, 2010 on the premise that on a scrutiny of the refund claim filed with reference to the purchase figures, discrepancies were noted in the context of the sellers not having reported the sales turnover by the respective assessment circles and the dealer had not paid the input tax. Thus on the mere failure of the sellers not reporting the turnover and paying the tax, the relief granted to the petitioner was sought to be withdrawn and the petitioner was directed to pay the difference in the tax at four per cent immediately. The petitioner replied in its letter dated March 2, 2010 giving the copy of the VAT returns of the suppliers along with their TIN number.

In respect of one of the suppliers, the petitioner, however, stated that they were yet to receive the VAT returns, nevertheless, they gave the TIN number. Subsequent thereto, on April 15, 2011, notice was issued by the respondent seeking further clarification, which was once again replied to on April 27, 2011. On May 24, 2011, an order was passed by the respondent taking a view that the refund of input-tax credit granted could not be sustained, in view of the false claim of purchase from the dealers. Along with the demand, penalty was also levied. The order further reads that in the letter dated April 27, 2011, the petitioner had stated that they could not obtain the relevant returns from two of the dealers and hence requested that the input-tax credit for the amount claimed be disallowed. Thus to the extent of Rs. 1,37,674.64, the petitioner admitted that the credit claimed be withdrawn. However, as regards the balance of the amount, the petitioner stood by its contention that the claim was validly made. But the said contention was rejected. Thus to the extent of Rs. 10,19,306, the relief granted was withdrawn. Aggrieved by the same, the petitioner has come before this court. On notice, the respondent had filed counter before this court.

2. The learned counsel appearing for the petitioner placed reliance on the instruction of the Commissioner dated August 21, 2007 wherein the Commissioner had stated that "the assessing officer shall verify the purchase bills and cause verification of the genuineness of the dealers using DEALER MASTER. If the assessing officer is satisfied regarding the existence of the dealers he has to refund the tax paid on the purchases by the exporter". It was further stated that "the assessing officer need not verify whether the tax was paid or not. For non-payment of tax by the suppliers, the purchasers cannot be held responsible. In the name of verification, the issuing of refund should not be delayed by the authorities concerned".

3. The learned counsel appearing for the petitioner further pointed out that when, as a purchasing dealer, he had complied with the requirements of law by producing the invoices, TIN number, the sale price and the VAT amount, the mere fact that his vendors had not filed the returns and not remitted the tax cannot stand against the petitioner to claim refund. In the circumstances, in the absence of any material for the Revenue to hold that the petitioner's vendors were non-existent dealers, the claim of the petitioner could not be rejected.

4. Per contra, learned Special Government Pleader appearing for the respondent pointed out to the decision of this court reported in [2010] 35 VST 103 (Mad) (Lloyd Insulations (India) Limited v. Joint Commissioner (CT), Chennai (Central Division)), wherein this court had held that the Commissioner has no legal authority to issue any clarification under the Value Added Tax Act and the clarification issued would not bind the assessee or the Revenue. It is further stated that the refund granted was sought to be withdrawn by reason of the fact that the petitioner's vendors had not remitted the tax. Since the non -remitting of the tax liability had caused prejudice to the Government's revenue, rightly, the assessing authority took proceedings to withdraw the relief granted to the

petitioner.

5. Heard learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent and perused the material records placed.

6. At the outset, we may have to reject the contention of the Revenue placing reliance on the decision of this court reported in [2010] 35 VST 103 (Mad) (Lloyd Insulations (India) Limited v. Joint Commissioner (CT), Chennai (Central Division)), which stands on a different footing as regards the clarification issued by the Commissioner on an application made by the assessee as to the rate of tax. As far as the instruction given on August 21, 2007 by the Commissioner, Commercial Taxes, there is no clarification given on any of the provisions of the Act or about the rate of tax on a particular entry. All that the Commissioner had stated in the said communication is only an instruction to the officers concerned in the matter of considering the input-tax credit claim. A reading of the same along with the provisions of the Act makes it clear that there is nothing repugnant in the said circular issued by the Commissioner as a head of the Department as regards the provisions of the Act on input-tax credit claim. As an highest administrative functionary, it is open to the Commissioner to give such instruction as may be necessary for the proper administration of the provisions of the Act. So long as the circular given does not militate against the provisions of the Act, it is not open either to the assessee or for that matter the Revenue itself to say that the same will not be binding on the authority/assessee concerned.

7. Leaving that aside, the perusal of section 17 of the Tamil Nadu Value Added Tax Act shows that the burden of proving that the transaction is not liable to tax lies on the assessee in respect of the claim on input-tax credit and the dealer has to prove that the transaction by him is not liable to tax under the provisions of the Act. Section 19(19) is the relevant provision for input-tax credit, which reads as follows :

19. (19) Where any registered dealer has availed input tax credit and has goods remaining unsold at the time of stoppage or closure of business, the amount of tax availed shall be reversed on the date of stoppage or closure of such business and recovered.

The relevant rule in respect of the claim of input-tax credit is given under rule 10 of the Tamil Nadu Value Added Tax Rules. Rule 10(2)

provides the manner of establishing that the claim on input-tax credit, which reads as follows :

10. (2) Every registered dealer who claims input-tax credit under sub-section (1) of section 19 shall, produce the original tax invoice, in support of his claim of the input-tax credit, containing the following details, namely :-

(i) A consecutive serial number; (ii) The date on which the invoice is issued; (iii) The name, address and the taxpayer identification number of the seller;

- (iv) The name, address and the taxpayer identification number of the buyer;
- (v) The description of the goods;
- (vi) The quantity of volume of the goods;
- (vii) The value of the goods;
- (viii) The rate and amount of tax charged; and
- (ix) The total value of the goods.

9. Going by the above said rule and read along with section 19(1) of the Tamil Nadu Value Added Tax Act, it is clear that so long as the purchasing dealer has complied with the requirements as given under rule 10(2), the claim of the purchasing dealer cannot, by any length of reasoning, be denied by the Revenue. The mere fact that the Revenue had not made an assessment on the assessee's vendor, per se, cannot stand in the way of the assessing officer considering the claim of the assessee u/s 19 of the Tamil Nadu Value Added Tax Act. Going by section 17 of the Tamil Nadu Value Added Tax Act that the burden on the purchasing dealer rest to the extent of showing that he is not liable to tax under the Act and read in the context of the fact that the assessee had given his sellers' TIN number and had also produced the invoices evidencing the purchase of materials of payment of tax, I do not think that the Revenue can successfully canvass its claim that the assessee is not entitled to have the refund.

10. As already pointed out, the circular issued by the Commissioner clearly states that so long as the vendor is found to be a registered dealer on the files of the Revenue, the claim of the assessee for refund could not be rejected nor delayed. As already pointed out, the Revenue does not deny, as a matter of fact, that the assessee's vendors are all registered dealers on the files of the Revenue and the assessee had also given the TIN number of these vendors. When such particulars are available, it is for the Revenue to take necessary action against the vendors, who had not remitted tax collected by them to the State. Without taking recourse to that, I do not think that the Revenue could deny the claim of the assessee.

11. The respondent had filed counter contending that the order passed by the respondent is amenable to appeal remedy, hence, writ may not be issued. I do not think that the mere presence of an appeal remedy is a thumb rule for rejecting the claim in matters of this nature where the facts are not in any manner controverted by the Revenue and that the assessee had complied with the requirements as given under rule 10(2) of the Tamil Nadu Value Added Tax Rules.

12. In the light of the above, I have no hesitation in rejecting the plea of the Revenue. Accordingly, W. P. No. 14349 of 2011 is allowed and the impugned order is set aside.

13. As far as W. P. No. 14350 of 2011 is concerned, the petitioner has challenged

the order dated May 24, 2011 relating to the assessment year 2008-09. It is seen from the order that the assessee originally claimed that wet blue purchased for Rs. 7,63,298 was returned and debit note was raised during January, 2009. The refund claim was thus subsequently reversed by filing a return. The assessing authority, however, ignored the return filed in January, 2009, a fact which was also pointed out in the reply dated April 7, 2011 filed along with the copies of the return. The assessing officer ultimately held that the assessee had claimed refund of input-tax credit during the month of January, 2009 and in respect of the goods, which were not exported, the claim had been made by the assessee. Thus, apart from making an assessment on the claim, penalty was also proposed u/s 27(4) (i) of the Tamil Nadu Value Added Tax Act at 50 per cent of the tax due. Aggrieved by the same, the assessee had come before this court.

14. The learned counsel appearing for the petitioner pointed out to the return filed in the month of December, 2008 as well as in January, 2009 along with the details of debit notes in the month of January, 2009 and the turnover considered in the order relating to the purchase from M/s. Fashion India Leather, in respect of which a reverse entry had been made and submitted that the officer had ignored the said details and merely passed an order summarily holding that the claim on export was a false one.

15. On going through the papers filed before this court, I feel that the proper course would be to set aside the order dated May 24, 2011, thereby direct the officer to consider the return filed by the assessee in the light of the form W filed in the month of January, 2009 along with form I return, annexure and the reply filed by the assessee on April 7, 2011, in proper perspective and pass orders thereon after giving the assessee an opportunity of being heard. Accordingly, the impugned order dated May 24, 2011 is set aside and Writ Petition No. 14350 of 2011 stands allowed. The assessing officer is directed to consider the return filed by the assessee as stated above. No costs. Consequently, M.P. Nos. 1 and 1 of 2011 are closed.