(2014) 11 AP CK 0172

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 286 of 2009

Hindustan Unilever Limited APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Andhra Pradesh Value Added Tax Act, 2005 — Section 13(5), 13(6), 16, 67 — Constitution of India, 1950 - Article 226, 265

Citation : (2015) 52 GST 134 : (2015) 80 VST 370

Hon'ble Judges : Ramesh Ranganathan, J;M. Satyanarayana Murthy, J.

Bench : Division Bench

Advocate : S. Dwarakanath, for the Appellant; M. Govind Reddy, for the Respondent

Judgement

Ramesh Ranganathan, J.?This revision is preferred against the order passed by the Sales Tax Appellate Tribunal, Hyderabad (for short, "the Tribunal") in T.A. No. 185 of 2009 dated October 21, 2009. The petitioner herein, a registered dealer on the rolls of the Assistant Commissioner, Hyderabad, is engaged in the manufacturing and trading of consumer goods. It has several depots and six manufacturing units in the State of Andhra Pradesh at (1) Ghatkeswar, Hyderabad, for manufacturing tea, (2) Pamaru Maria Exports, Vijayawada, for export of shrimps, (3) Sudha Agro, Adoni, for exporting castor oil, (4) Jitendra Roller Flour Mill, Hyderabad, for manufacturing Annapurna atta, (5) Rayalaseema Alkalies, Kurnool, for manufacturing refined glycerine, and (6) JOCIL Ltd., Guntur, for manufacture of soap noodles.

2. It is not in dispute that the petitioner has a common TIN registration for all its manufacturing and trading divisions in the State of Andhra Pradesh; and the turnover of sales, branch transfers and input-tax credit of each division is consolidated, and input-tax credit is being claimed thereupon. The Deputy Commercial Tax Officer, Madhapur Circle, assessed the petitioner to tax. With regards the petitioner''s claim for input-tax credit for the JOCIL unit, the

assessing authority applied rule 20(6) of the Andhra Pradesh Value Added Tax Rules (for short, "the Rules") on the ground that it was a case of specific input for specific output; and as the entire output of stock was transferred outside the State, without there being any taxable transaction, the petitioner was ineligible for input-tax credit in respect of the local purchases of inputs. He rejected the petitioner''s claim that the formula, A x B/C, should be applied. Aggrieved thereby, the petitioner preferred an appeal before the Appellate Deputy Commissioner and, on the said appeal being dismissed, they carried the matter in further appeal to the Sales Tax Appellate Tribunal.

3. In the order under revision the Tribunal, while recording that the petitioner had several manufacturing units and that the JOCIL unit was one such manufacturing unit, held that, under section 13(6) of the Andhra Pradesh Value Added Tax Act, 2005 (for short, ''the Act''), input-tax credit for transfer of taxable goods outside the State, by any VAT dealer otherwise than by way of sale, shall be allowed for the amount of tax in excess of four per cent.; based on section 13(5) and (6) several Advance Rulings had been rendered; with regards rule 20(6) and rule 20(10) the Advance Ruling Authority, in case of M/s. Sri Dhanalakshmi Cotton & Rice Mills (P) Limited, Guntur, had, by order dated July 9, 2005, held that rule 20(6) of the Rules is applicable division wise in the assessment year; the assessing authority had recorded a finding that where input was used in a particular division, the input-tax credit on such inputs can be claimed separately for such division and the petitioners were adopting the same method at Hyderabad, Secunderabad, Vijayawada depots, etc.; the finding remains uncontroverted; the burden of proving that any sale or purchase effected by a dealer is not liable to tax lies on him in terms of section 16 of the Act; the petitioner had not discharged the statutory burden; division wise computation of input-tax credit was a method of calculation which the assessing authority had adopted; such a method of calculation was not impermissible; there is no bar in adopting division wise method when the petitioner was engaged in manufacturing several commodities, through several divisions, which were partly taxable and partly non-taxable; in terms of section 67 of the Act, the Ruling of the Advance Ruling Authority is binding on the petitioner; and as neither the petitioner, nor any other dealer, had sought review of the order of the Advance Ruling Authority, the said order was binding on them. The petitioner''s appeal was, accordingly, dismissed.

4. Before us Sri S. Dwarakanath, learned counsel for the petitioner, would rely on a Division Bench judgment of this court in Maxwroth Plywoods Private Limited Vs. Assistant Commissioner (CT) (Audit) and Another, ; [2012] 54 APSTJ 178; and the order of the STAT which was confirmed in TRC No. 9 of 2013 dated July 4, 2013, to contend that, as the petitioner has a common TIN number for all its divisions, they are entitled to claim input-tax credit for all the divisions as a whole; there is no statutory provision which enables the assessing authority to restrict input-tax credit division wise; rule 20(6) of the Rules, whereunder specific inputs are meant for specific outputs, is applicable only if the dealer

exercises his option to claim input-tax credit separately for taxable goods; only when they are able to establish that the specific inputs are meant for specific outputs, can the assessee claim the benefit of rule 20(6); the words "able to establish" in rule 20(6) shows that it is at the option of the assessee; it is for the assessee to exercise his option whether or not he should claim input-tax credit in terms of rule 20(6) of the Rules; and it is not open to the assessing authority to deny the petitioner input-tax credit only on the ground that specific inputs in a division were meant for specific outputs in that particular division.

5. On the other hand, Sri M. Govind Reddy, learned Special Standing Counsel for Commercial Taxes, would contend that, except for a few months, the entire stock in the JOCIL division was transferred to units outside the State; there were no taxable sales and, as such, rule 20(9) of the Rules was inapplicable; the petitioner had also not submitted documentary evidence to show that the stock transfer of goods to other divisions were manufactured in JOCIL; the petitioner was following the provisions of rule 20(6) of the Rules, and claiming total input-tax credit in the case of items like ice creams, diapers, sanitary napkins which were locally purchased and locally sold from Hyderabad, Secunderabad and Vijayawada depots; in the case of other goods such as castor and oil, they were claiming specific inputs meant for specific outputs; they were not following the same method in the case of stock transfers effected from JOCIL where specific inputs were identified for specific outputs; and, in view of the Advance Ruling Authority''s decision dated July 9, 2005 which is binding on the petitioner and the assessing authority, the Tribunal was justified in rejecting the petitioner''s claim both regarding the applicability of rule 20(6) of the Rules, and in restricting the benefit of input tax credit division-wise.

6. In Maxwroth Plywoods Private Limited Vs. Assistant Commissioner (CT) (Audit) and Another, , the assessee had claimed input-tax credit adjusting it first to the output tax payable on its trading activity, and the remaining input-tax credit against output tax payable by the manufacturing unit. The assessing authority, however, held that input-tax credit should be adjusted first against the output tax payable by the assessee''s manufacturing unit, and the balance alone should be utilised for adjustment against the output tax payable on the trading activity. On an assessment order being passed, rejecting the petitioner''s claim, the jurisdiction of this court under article 226 of the Constitution of India was invoked. It is in this context that this court held (page 576 in 62 VST):

"Both in the order of assessment, and in the counter-affidavit, the first respondent admits that there is no specific rule providing for the manner in which he had assessed the petitioner to tax. Under article 265 of the Constitution of India no tax can be levied or collected except by authority of law and in the absence of a procedure, similar to the one adopted by him, being prescribed by law it is not open to the assessing authority to contend that a particular mode should be adopted, or that the procedure adopted by the assessee is not rational. It is the petitioner''s case that the method of adjustment of input tax against the output tax payable, adopted by them would enable them to avail of the benefit of the balance tax deferment in its entirety which they would otherwise not be in a position to utilize as the period of availment of tax deferment expired by March, 2007. The assessing authority cannot insist on the assessees adopting a particular method which would deny them the benefit of utilization of the balance available tax deferment in its entirety, and instead pay tax. The impugned order of assessment, to the extent the assessing authority adjusted the input tax credit first against the manufacturing activity of the petitioner and the balance against their trading activity, is neither a method authorized by law nor can such a method be forced on the assessees as it is to their detriment. The assessment order must, to this limited extent, be set aside.

The writ petition is allowed to the extent indicated hereinabove..."

(emphasis Here italicised supplied).

7. Following the said judgment, the Sales Tax Appellate Tribunal, in Cavinkare (P) Ltd. v. State of A.P., held that there was no provision in the APVAT Act to compute input-tax credit division wise; and the Advance Ruling is not applicable to the present case in view of the judgment rendered by the A.P. High Court in Maxwroth Plywoods Private Limited Vs. Assistant Commissioner (CT) (Audit) and Another, . The tax revision case, preferred by the State of Andhra Pradesh against the said order of the STAT, was dismissed by a Division Bench of this court in State of A.P. v. Cavinkare (P) Ltd. (T.R.C. No. 9 of 2013 decided on July 4, 2013).

8. As this court, in Maxwroth Plywoods Private Limited Vs. Assistant Commissioner (CT) (Audit) and Another, , has held that restricting the claim of input-tax credit division wise is not authorised by law, the order of the STAT holding to the contrary, placing reliance on a decision of the Advance Ruling Authority, does not merit acceptance. In the absence of any statutory provision, restricting input-tax credit only to the output tax payable in a particular division, the respondents were not justified in holding that the petitioner was not entitled to claim adjustment of the input-tax credit with the output tax payable in their other divisions.

9. The order under revision must be, and is accordingly, set aside. The matter is remanded to the assessing authority to extend the petitioner the benefit of input-tax credit in terms of this order, without restricting their claim to any particular division. As the TRC is allowed on this short ground, it is wholly unnecessary for us to examine the submission of Sri S. Dwarakanath, learned counsel for the petitioner, that, under rule 20(6) of the Rules, the claim for input-tax credit separately for taxable goods, on establishing that specific inputs are meant for specific outputs, is at the option of the assessee. The TRC is, accordingly, disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this revision, shall stand closed.