

(2007) 11 MAD CK 0276

In the Madras High Court

Case No : Writ Petition No's. 34544 and 34545 of 2006 and M.P. No's. 1 and 2 of 2006

Lakshmi Machine Works Ltd.

APPELLANT

Vs

Deputy Commissioner (CT) and Others

RESPONDENT

Date of Decision : 05-11-2007

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 — Section 12, 19(6), 27(2), 27(4), 51

Citation : (2007) 11 MAD CK 0276

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : Palani Selvaraj, for the Appellant; R. Mahadevan, Additional Government Pleader, for the Respondent

Judgement

S. Manikumar, J.—The petitioner has challenged the order of the Assistant Commissioner (CT), Fast Track, Assessment Circle-II, Coimbatore, the second respondent herein, dated October 29, 2007, by which, the second respondent in exercise of his power u/s 27(2) of the Tamil Nadu Value Added Tax Act, 2006, has reversed the availment of input tax credit for the period from January 2007 to June 2007.

2. As common questions of fact and law are involved, the writ petitions are taken up together and being disposed of by a common order.

3. Brief facts leading to the writ petitions are as follows:

The petitioner is a textile machinery manufacturing company over a long time. In order to manufacture a textile machinery, the petitioner has to procure number of inputs like small components, viz., control panel, operator panel, panel board with autoleveller, etc., from the local registered dealers/manufacturers and in the instant case, the petitioner has purchased the same from Lakshmi Electrical Control Systems Ltd., Coimbatore and paid value added tax, at the rate of four per cent. However, the control panels cannot be directly fit in by the petitioner in

the end-product, viz., textile machinery and some of the other subsidiary components like inverter, AC servo drive, connectors, fan filter, outlet filter, etc., have to be fixed in the control panel to keep it intact.

4. The petitioner has further submitted that the subsidiary components are manufactured and supplied by the petitioner directly to the selling dealers at Coimbatore on returnable basis are to fix in the petitioner's purchased control panel. It is the further case of the petitioner that such control panels fixing with the abovesaid subsidiary components being supplied by the petitioner on payment of VAT on the value of the entire control panels, inclusive of the value of the petitioner's subsidiary components. The petitioner has further submitted that insofar as his own product is concerned, it is being supplied on returnable basis for the period from January 2007 onwards. According to him, the scheme of the Act envisages that the dealer need not pay tax on his own goods, unless there is sale or purchase. In the above background, when the petitioner has claimed the input tax credit u/s 12 of the Act, the respondent has issued two notices dated July 12, 2007 to the petitioner stating that the petitioner has availed excess input tax credit for Rs. 70,70,655 for the period from January 2007 to March 2007 and Rs. 99,70,989 for the period from April 2007 to June 2007, respectively and therefore, demanded payment. In reply to the said show-cause notices, the petitioner, by letter dated July 24, 2007, requested time to file their objections. But, the respondent passed an order of reversal of input tax on July 31, 2007, behind the back of the petitioner imposing penalty at 150 per cent u/s 27(4) of the TNVAT Act.

5. Alleging violation of principles of natural justice, the petitioner has filed W.P. No. 27400 of 2007 and this court, by an order dated August 24, 2007, set aside the impugned order of assessment dated July 31, 2007 and directed the petitioner to submit a reply to both the show-cause notices of the respondent dated July 12, 2007 within a period of 15 days from the date of passing of the order and on receipt of such explanation/reply, the respondent therein (second respondent herein) was directed to consider the same and pass appropriate orders, within a period of four weeks. Pursuant to the order of this court, the petitioner has filed objections dated September 3, 2007 and October 11, 2007, respectively.

6. The assessing officer, the second respondent herein, after considering the objections of the petitioner, held that the petitioner is bound to refund the input tax credit, in addition to penalty. The assessing officer on the basis of the materials, found that there is a mismatch between the purchase turnover and the input tax claims made. After extracting the relevant provisions, the assessing officer, observed that the input tax credit is eligible only on the purchase of the goods specified in the First Schedule in the course of business from registered dealer within the State of Tamil Nadu and when there is no purchase of goods, there is no tax liability in the transaction. The second respondent has further observed that if any amount is paid purporting to be VAT, it is a wrong payment

and for which, no input tax credit can be claimed.

7. On the basis of the materials, the assessing officer has found that as there was no purchase of goods, the petitioner is not entitled to avail the input tax credit. Therefore, the input tax credit, which was availed in excess was found to be not in accordance with the provisions of the Act and having found that the petitioner is not entitled to the input tax credit, the assessing officer has resorted to reversal as per Section 27(2) read with Section 19(6) of the TNVAT Act for the abovesaid period of assessment.

8. Though learned Counsel for the petitioner argued on merits of the case, but having regard to the specific finding of fact, that there was no purchase of goods, for which, the input tax credit was availed, agreed that the petitioner would avail the alternative remedy of appeal, u/s 51 of the TNVAT Act, 2006. Placing reliance on the decision in *Legrand (India) Pvt. Ltd. v. Union of India* reported in [2007] 216 ELT 678 (Bom), learned Counsel for the petitioner submitted that as per Section 51 of the TNVAT Act, an aggrieved person shall prefer an appeal before the appellate authority within 30 days from the date of receipt of the copy of the order and the action of the assessing officer in issuing notice dated July 31, 2007 to the Branch Manager, Indian Bank, Main Branch, Coimbatore to withhold the money in his account is contrary and illegal. It is settled law that coercive steps should not be taken for recovery of dues before the expiry of the appeal period and recourse taken by the assessing officer to recover arrears, in such a hasty manner, even without giving adequate time to the petitioner to prefer an appeal, is arbitrary.

9. Recording the submission of the learned Counsel for the petitioner, to adjudicate the factual finding before the appellate authority, the petitioner is at liberty to prefer the statutory appeal along with the payment of statutory tax within 30 days from the date of receipt of a copy of this order and on receipt of the same, the appellate authority shall consider all the points raised in the appeal and pass orders on merits and in accordance with law.

10. The letter of the Assistant Commissioner (CT), Fast Track Court, Assessment Circle-I, Coimbatore, addressed to the Branch Manager, Indian Bank, Main Branch, Coimbatore, for realisation of the reversal of VAT for the period between January 2007 to June 2007 is directed to be withdrawn immediately and the Bank Manager, Indian Bank, Main Branch, Coimbatore, is hereby directed not to give effect to the request made by the Assistant Commissioner (CT), Fast Track Court, Assessment Circle-I, Coimbatore. With the above directions, the writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.