

(2010) 09 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15614 of 2010

Maxwroth Plywoods Private Limited

APPELLANT

Vs

Assistant Commissioner (CT) (Audit) and Another

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 265

Citation : (2013) 62 VST 573

Hon'ble Judges : V.V.S. Rao, J;Ramesh Ranganathan, J

Bench : Division Bench

Advocate : S. Sasidhar Reddy, for the Appellant; P. Balaji Varma, Special Standing Counsel for Commercial Taxes, for the Respondent

Final Decision : Allowed

Judgement

Ramesh Ranganathan, J.—The order of assessment passed by the first respondent dated October 30, 2009 is under challenge in this writ petition as arbitrary and illegal. The petitioner is a private limited company registered under the Companies Act, 1956. It set up an industrial unit in Visakhapatnam district for the manufacture and sale of plywood, panels, flush doors, etc. In addition to its manufacturing activity, the petitioner also carries on trading activity in the aforesaid goods. The State Government extended incentives to the petitioner, under G.O. Ms. No. 108, dated May 20, 1996 and G.O. Ms. No. 134, dated July 1, 1996, by way of a final eligibility certificate dated May 28, 2004 whereby the petitioner was entitled for tax deferment of Rs. 59,10,440 in a seven year duration commencing from March 29, 2000 till March 28, 2007. As on April 1, 2005, the petitioner had availed of tax deferment benefit of Rs. 22,05,048, leaving the balance to be availed of Rs. 37,05,392. The petitioner claimed the balance incentive of Rs. 17,69,921 for the assessment year 2005-06, and Rs. 19,71,100 for the assessment year 2006-07.

2. The petitioner claimed input-tax credit, relatable to the assessment years 2005-06 and 2006-07, and, in the first instance, adjusted the input-tax credit

against the output tax payable on its trading activity, and the remaining input-tax credit against the output tax payable by its manufacturing unit. For the assessment year 2005-06, the input-tax credit of Rs. 61,61,364 was adjusted first against the output tax payable on their trading activity of Rs. 36,61,937, and the balance input-tax credit of Rs. 25,36,000 was adjusted against the output tax payable by its manufacturing unit. Similarly, for the assessment year 2006-07, the input-tax credit of Rs. 68,03,658 was first adjusted against the output tax payable on their trading activity of Rs. 46,63,056, and the balance input-tax credit was adjusted against the output tax payable by their manufacturing unit. It is the petitioner's case that adopting any other method would result in their not being able to avail of the tax deferment benefits, as the period stipulated for tax deferment came to an end by March, 2007.

3. The returns filed by the petitioner was accepted by the Commercial Tax Officer (second respondent). The first respondent, however, issued a notice in form 305-A dated October 14, 2009 proposing that input-tax credit should be adjusted first against the output tax payable by the petitioner's manufacturing unit, and the balance alone should be utilised for adjustment against the output tax payable on their trading activity. The petitioner filed objections contending that, if the entire output tax of their trading activity relatable to assessment year 2005-06 and 2006-07 for Rs. 47.43 lakhs and Rs. 58.15 lakhs, respectively, was first adjusted with the input-tax credit of Rs. 61.61 lakhs and Rs. 68.03 lakhs, respectively, the petitioner would be entitled to utilize the tax deferment available to its manufacturing unit for the remaining balance of Rs. 37.05 lakhs. The petitioner pointed out that the method adopted by them did not fall foul of either the Statutory provisions or the Rules. The first respondent, despite his admission that no rule was prescribed providing for such a method of adjustment, confirmed his proposal holding that it was rational. Accordingly, he passed an order of assessment on October 30, 2009 rejecting the petitioners objections, and raising a demand for Rs. 23,53,400. On the plea that the impugned order of assessment is without jurisdiction, the petitioner has filed this writ petition under article 226 of the Constitution of India.

4. In his counter-affidavit, the first respondent would submit that the petitioner is basically a manufacturing unit; if there had been no trading activity, the input tax would have been adjusted against the output tax on sale of products manufactured by the unit; all the inputs were used only for the purpose of manufacturing products; it was, therefore, logical to connect the input and output tax on the sale of manufactured products to arrive at the VAT liability; since the input tax related to inputs used for manufacture, the input-tax credit should first be adjusted against output tax payable on the petitioner's manufacturing activity; since the petitioner is also carrying on trading activity the input tax, available after adjusting output tax on the sale of products manufactured by them, would be adjusted against the output tax liability on the trading activity; and, though there was no specific rule in this regard, keeping in mind the object of the statute and the legislative intent the procedure adopted

by the Department was rational, more so as the object of tax legislation is to raise revenue. The 1st respondent would further submit that, if there had been a converse situation, the petitioner would not have any qualms about being denied the said benefit; though there was no specific rule, a rational approach had to be adopted keeping in view the object of the statute, and the intention of the Legislature; and no part of a statute could be rendered ineffective.

5. 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 assessee 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 assessee 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. However, in the circumstances, without costs.