

(2011) 06 MAD CK 0245

In the Madras High Court

Case No : W.A. No. 730 of 2011 and M.P. No. 1 of 2011

Ranjit Impex

APPELLANT

Vs

Appellate Deputy Commissioner-I and Assistant
Commissioner (CT)

RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 — Section 19, 19(11), 22, 24, 26

Citation : (2011) WritLR 936

Hon'ble Judges : M.Y. Eqbal, C.J;T.S. Sivagnanam, J

Bench : Division Bench

**Advocate : R. Arumugam, for the Appellant; S. Kanmani Annamalai, G.A. (Tax),
for the Respondent**

Final Decision : Dismissed

Judgement

M.Y. Eqbal, C.J. and T.S. Sivagnanam, J.—This appeal is directed against the judgment and order dated 17.02.2011 in W.P. No. 2974 of 2011.

2. The writ Petitioner is the Appellant herein. The writ petition was filed for issuance of a writ of Certiorarified Mandamus to quash the endorsement made by the Appellate Deputy Commissioner-I, Commercial Taxes, dated 06.01.2011, in and by which, the Petitioner's appeal memorandum was returned, directing the Appellant to pay a sum of Rs. 8,52,742/- as required u/s 51 of the Tamil Nadu Value Added Tax Act, 2006, (hereinafter referred to as "the Act").

3. The learned single Judge, who heard the writ petition, disposed of the same by directing the writ Petitioner to comply with all the requirements, as intimated by the Appellate Authority in the Return Memo dated 03.01.2011 and on such compliance, the Appellate Authority was directed to number the appeal and pass orders on merits and in accordance with law.

4. The learned Counsel appearing for the Appellant raised three contentions before us namely, the Appellant should not be compelled to pay a sum of Rs.

8,54,851/-, as the Appellant has paid Rs. 3,36,090/- on 20.12.2010, and the Appellant has ITC eligibility to the tune of Rs. 11,90,941/- which is lying in credit and the same should be adjusted. The second contention raised by the learned Counsel is that in terms of Section 19 of the Act, the authorities are bound to adjust input tax credit amount available to the credit of the Appellant and failure to do so is unjust. The third contention raised is that the assessing authority while passing the order of assessment dated 15.10.2010, accepted that the Appellant has ITC eligibility to the tune of Rs. 78,41,988/-, whereas a sum of Rs. 63,73,351/- alone has been adjusted without giving full adjustment.

5. Per contra, the learned Government Advocate appearing for the Respondents, by relying upon the counter affidavit, would submit that the Appellant claimed ITC to the tune of Rs. 1,42,350/- in their monthly return for March 2007 and at the time of claim, the original invoice was not received and the invoice was received on 28.05.2007, but not reported to the department in May 2007 or subsequently. Therefore, the ITC claim of Rs. 1,42,350/- was disallowed claim as per the Section 19(11) of the Act and there was ITC credit limit of Rs. 78,41,988/-. However, during April 2008, the Appellant had taken the ITC of Rs. 14,67,241/- accrued from the amount, which is outstanding as on 31.03.2007. Thus as on 31.03.2007, the net ITC eligible is only Rs. 63,74,247/-. In the counter affidavit, the manner in which the assessment was completed by the second Respondent has been set out. The second Respondent has stated that there is some error in the reconciliation which will be taken note of. Therefore, the learned Government Advocate would contend that the adjustment of ITC to the tune of Rs. 63,73,351/- is perfectly justified. The learned Government Advocate would further contend that the Appellant is bound to comply with the statutory requirement u/s 51 of the Act by paying the requisite amounts and producing the challan and without such remittance, the appeal cannot be taken on file.

6. We have heard the submissions on either side and perused the materials available on record.

7. Section 51 of the Act states that any person objecting to an order passed by an appropriate authority u/s 22, 24, 26, 27 (1), (2) (3), (4), 28, 29, 34, and 40(2) other than an order passed by the Deputy Commissioner (Assessment) may, within a period of thirty days from the date on which the order was served, appeal to the appellate Deputy Commissioner having jurisdiction. The said authority is the first Respondent herein. The second proviso to Section 51 is of relevance to the facts of the present case and it provides that no appeal shall be entertained under Sub-Section (1) of Section 51, unless it is accompanied by satisfactory proof of the payment of the tax admitted by the Appellant to be due or of such installments thereof as might have become payable, as the case may be, and twenty five percent of the difference of the tax assessed by the assessing authority and the tax admitted by the Appellant. The Supreme Court in *Lakshmi Rattan Engineering Works Ltd. Vs. Asstt. Commr. Sales Tax, Kanpur* and

Another, , while interpreting the word "entertained" explained it to mean as taking up the appeal for consideration and not the mere filing of it and hence the proof of payment of payment of tax has to be produced at the time and need not accompany the appeal when it is filed, but the payment of tax to the Government should have been made before the due date for filing the appeal of the appeal as extended by the appellate authority for sufficient cause though the challan or proof of payment may be produced after the appeal is admitted and taken up for consideration.

8. Thus, in view of the law laid down by the Supreme Court and in view of the specific statutory requirement, the Appellant herein while preferring an appeal is bound to comply with the conditions prescribed u/s 51 of the Act, more particularly, the condition relating to payment of tax in the second proviso. Having held so, we are left with the second question as to whether the Appellant is entitled for adjustment of the input tax credit available. In this regard, the learned Counsel appearing for the Appellant would contend that by a combined reading of Section 19 and Section 51 of the Act, the Appellant is entitled to fall back on the ITC available to their credit and the department is bound to effect adjustment and not call upon them to make the payment. On facts, it is seen that the input tax credit has already been adjusted by the assessing authority in the order of assessment dated 15.10.2010. Therefore, the question whether Section 19 and 51 of the Act have to be read together becomes academic and is not required to be decided in the instant case, since the authorities have already adjusted the ITC.

9. The third question to be decided is as to whether full and proper adjustment has been made by the department. The learned Counsel by referring to the order of assessment dated 15.10.2010, would submit that the net ITC eligible was Rs. 78,41,988/-, but whereas the adjustment has been done only to the extent of Rs. 63,73,351/-. Therefore, the remaining amount has also to be given credit.

10. It is seen that the Appellant themselves carried forward the ITC of Rs. 14,67,241/- accrued from the amount, which is outstanding as on 31.03.2007, thus leaving the net eligible ITC at Rs. 63,74,247/-. Therefore, the assessing authority, in our view, rightly adjusted the net ITC available for the period of assessment.

11. The learned Counsel appearing for the Appellant would submit that as on date, there is ITC to the tune of Rs. 8,54,851/- and the same should be given credit to. This contention raised by the learned Counsel does not merit any acceptance, since the Appellant's appeal relates to an order of assessment passed for the assessment year 2007-08 i.e., for the year ended 31.03.2008 and as on the said date, the total tax payable after adjusting ITC comes to Rs. 13,43,453. Therefore, the Respondents have rightly calculated the actual amount payable at Rs. 9,58,613/- for entertaining the appeal by the appellate authority.

12. Hence for all the above reasons, we find no grounds to interfere with the

order passed by the learned Single Judge. Accordingly, the writ appeal fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.