(2015) 08 MAD CK 0048

In the Madras High Court

Case No : W.P. No. 25637 of 2015 and M.P. No. 1 of 2015

Sri Ratna Electricals APPELLANT

Vs

The Assistant Commissioner (CT), Sholavaram Assessment Circle RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:
Constitution of India, 1950 — Article 226
Tamil Nadu Value Added Tax Act, 2006 — Section 19(20)

Citation : (2015) 08 MAD CK 0048

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : P. Rajkumar, for the Appellant; S. Manoharan Sundaram, AGP(T), for the Respondent

Judgement

R. Mahadevan, J.—Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes), for the respondent.

2. The petitioner has come forward with the writ petition challenging the order of the respondent dated 3.7.2015.

3.1. The petitioner, a registered dealer on the files of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as TNVAT Act), is a dealer in PVC pipes and fittings and also electrical goods. The petitioner used to purchase PVC pipes and fittings from M/s. Ashirvad Pipes Pvt. Ltd., Hosur, on payment of VAT and effect further sales inside the State. According to the petitioner, the PVC pipes and fittings are goods falling under Entry 100 of Part B of the I Schedule to the TNVAT Act, taxable at the rate of 5%. The petitioner''s sale price inside the State is higher than the purchase price even after receipt of discount from the supplier M/s. Ashirvad Pipes Private Limited.

3.2. According to the petitioner, during the assessment year 2013-14, the petitioner received turnover discount of Rs. 6,32,637/- and rate difference of Rs. 5,16,223/- from the said supplier M/s. Ashirvad Pipes Pvt. Ltd., through credit notes. Further, according to the petitioner, apart from the reported total and taxable turnover in its monthly returns, they also filed Form WW before the respondent for the assessment year 2013-14 and the assessment for the said year was completed as a deemed assessment. Thereafter, attempting to include the turnover related to discount received, a notice was issued by the respondent on 11.03.2015 calling upon the petitioner to file their objections. Though the petitioner prepared detailed objections dated 11.04.2015 along with documentary evidences, the same was refused to be received by the respondent, however, insisted to remit advance tax and thereafter he would receive the objections. But, the petitioner''s representative, expressed their inability to pay any advance tax. According to the petitioner, though a number of requests were made to accept their objections, all gone in vain. When that being the position, all of a sudden, the respondent has passed the impugned order on 03.07.2015, which was received on 16.07.2015, confirming the proposals by levying tax on the discounts received by the petitioner, treating the same as sales turnover in the hands of the petitioner and also levying penalty. Aggrieved over the same, the petitioner is before this Court.

4. Attempting to include the turnover related to the discounts received, a notice was issued by the respondent on 11.03.2015. Admittedly, the petitioner did not file any objections. According to the learned counsel for the petitioner, without affording sufficient opportunity, treating the turnover relating to the discounts received, dehors the circular issued by the Commissioner of Commercial Taxes dated 04.11.2013, the respondent proceeded to levy tax on the disputed turnover. To that effect an order came to be passed on 03.07.2015, which is challenged herein.

5. The learned counsel appearing for the petitioner, referring to the Commissioner''s Circular dated 04.11.2013, followed by a recent circular dated 11.08.2015, submitted that such an act of calculation of the turnover related to discounts is impermissible.

6. At this juncture, it is useful to refer to paragraph Nos. 4 and 5 of the Circular of the Commissioner of Commercial Taxes dated 11.08.2015, which read as follows:--

"4. In the reference second cited, it has already been informed that for operation of Section 19(20), the following three steps need to be followed:

(i) Identification of cases in which huge ITC is accumulated on account of sale price being lower than the purchase price.

(ii) The above facts have to be ensured by verifying the purchase and sale price per unit.

(iii) If the above two are detected in a given return, the quantum of ITC which exceeds the output tax shall be reversed.

Further, section 19(20) has nothing to do with levy of tax on the discount which has to be dealt with independently as per the provisions of the act and circumstances of each case.

5. In order to give effect for reversal of undue enrichment of ITC, section 19(20) should be given effect by correlating the sale price of goods with the corresponding purchase price. If the sale price is lesser than the purchase price, then the amount of ITC in excess of output tax should be reversed".

7. Further, according to the learned counsel for the petitioner, without considering the above mentioned circulars and without affording due opportunity to the petitioner, the respondent has passed the impugned order and hence seeks for appropriate relief.

8. The learned Additional Government Pleader (Taxes) fairly submitted that the respondent is duty bound to follow the circulars touching the matter in issue and could have granted appropriate relief to the petitioner.

9. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

10. A perusal of the impugned order dated 03.07.2015, it is crystal clear that neither the circular of the Commissioner of Commercial Taxes dated 04.11.2013 nor the appropriate statutory provision viz., Section 19(20) of the TNVAT Act have been referred to.

11. It is also brought to the notice of this Court a Division Bench Judgment of this Court dated 05.08.2015 made in W.A. No. 1038 to 1040 of 2015, wherein, the orders of dismissal on the ground of availability of alternative remedy was challenged. The only ground taken by the appellants therein was that when the issue raised before the Assessing Officer was on an interpretation of a Circular issued by the Joint Commissioner and also covered by another decision in favour of one of the group companies, there was no necessity for the appellants to go to the appellate authority and exhaust all statutory remedies. This Court, accepting the contentions of the appellants therein, set aside the impugned orders and remanded the matter to the assessing authority for fresh consideration by taking into account the Circular of the Commissioner dated 04.11.2013 and the orders of assessment passed in respect of one of the group companies. The relevant portions of the said Judgment is extracted hereunder:--

"12. It is true that in exercise of jurisdiction under Article 226 this Court would not, as a matter of course, a low persons to by-pass the alternative remedy of appeal. But, in cases of this nature, where the assessees claim the benefit of a circular and also claim that in respect of one of the companies forming part of the very same group, a different view has been taken by another assessing officer, it is not worth driving the parties to avail the alternative remedy.

13. In the objections submitted on 28.1.2015 to the notice issued on 8.1.2015, the appellants have brought this fact to the notice of the respondent. But, in the orders impugned in the writ petitions, the respondent has not taken note of the same. Therefore, we are of the considered view that the impugned orders could be set aside and the matter sent back to the respondent for a fresh consideration.

14. Accordingly, the writ appeals are allowed and the orders of the learned Judge are set aside. The writ petitions are a lowed and the impugned assessment orders passed by the respondent are set aside. The matter is remitted back to the respondent. The respondent shall take into account the Circular of the Commissioner dated 4.11.2013 and the orders of assessment dated 31.3.2015 passed in respect of M/s. Sree Laxmi Traders and pass orders afresh within a period of six weeks. No costs..".

12. In view of the above, the impugned order dated 3.7.2015 passed by the respondent is liable to be set aside and accordingly, the same is set aside. The petitioner is permitted to file necessary objections to the notice dated 11.03.2015 and on such filing of objections, the same shall be considered and appropriate orders be passed by the respondent, on merits and in accordance with law, in the light of the Circulars referred to above and also taking into account Section 19(20) of the TNVAT Act, after giving due opportunity to the petitioner, within a period of six weeks from the date of receipt of a copy of this order.

The writ petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

