
(2013) 04 MAD CK 0261

In the Madras High Court

Case No : Writ Petition No's. 11847 and 11848 of 2013 and M.P. No. 1 of 2013

Tata Sky Ltd.

APPELLANT

Vs

Assistant Commissioner (CT)(FAC)

RESPONDENT

Date of Decision : 23-04-2013

Acts Referred:

Tamil Nadu Value Added Tax Act, 2006 — Section 19(4), 22

Citation : (2013) 04 MAD CK 0261

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : Arvind P. Datar, for Mr. R. Raghavan, for the Appellant; A.R. Jaya Prathap, Govt. Advocate, for the Respondent

Judgement

V. Dhanapalan, J.—By consent of the learned counsel appearing for the parties, the Writ Petitions are taken up for disposal at the admission stage. Heard Mr. Arvind P. Datar, learned Senior Counsel appearing for the petitioner and Mr. A.R. Jaya Prathap, learned Government Advocate who took notice for the respondent.

2. What is challenged by the petitioner in these Writ Petitions is the order passed by the respondent in the proceedings in TIN. No. 33100561230/2009-10 (in W.P. No. 11847 of 2013) and TIN No. 33100561230/2010-11 (in W.P. No. 11848 of 2013), both dated 21.3.2013, seeking to quash the same.

3. The case of the petitioner in a nut-shell is as follows:

(a) The petitioner-Tata Sky Ltd. is a registered dealer on the file of the respondent and had been filing Returns as required under the provisions of the Tamil Nadu Value Added Tax Act (for short, "the TNVAT Act") regularly on self-assessment basis. The Returns filed by them for the years 2009-2010 and 2010-2011 were accepted in terms of Section 22 of the TNVAT Act.

(b) The petitioner was issued with pre-revision notices (for short, "the PRN"), dated 6.3.2013 on the basis that, without reversing the Input Tax Credit (for short, "the ITC"), the petitioner removed the goods on stock transfer basis to the

other States in India and the PRN sought to invoke Section 19(4) of the TNVAT Act for reversal of the ITC amounts. The petitioner filed replies, dated 15.3.2013, stating that similar matters relating to assessment done for 2007-2008 and 2008-2009 are pending in appeals and they require ten days" time to collect the particulars and submit the documents with objections to be filed to the PRN.

(c) However, the respondent passed the impugned orders stating that it was found that the petitioner-dealer effected stock transfer in respect of the respective amounts and as per Section 19(4) of the TNVAT Act, the ITC will be allowed on tax paid or payable in the State on the purchase of the goods, in excess of 3% of tax relating to such purchases and the respondent ordered reversal of the ITC amounts and also observed that since the petitioner has not produced any stay order in respect of the appeals pending before the Deputy Commissioner (Appeals), the demand raised is open for recovery and accordingly, the respondent re-assessed the tax and also issued notices in Form-O. Hence, the Writ Petitions are filed for the above relief.

4. Learned Senior Counsel appearing for the petitioner assailed the impugned orders on the ground that they are passed in violation of principles of natural justice without even considering the request of the petitioner for extension of time to file their objections to the PRN. He further contended that without even communicating the petitioner for allowing or rejecting the time sought for by the petitioner to file objections to the PRN, the impugned orders are passed, which are legally infirmed, as they have been passed without even affording an opportunity of hearing to the petitioner. He also submitted that the alleged notices of the respondent, dated 15.3.2013, as seen from the reference column in the impugned orders, were not served on the petitioner and hence, the impugned orders cannot be sustained.

5. On the other hand, the learned Government Advocate appearing for the respondent submitted that in the absence of any stay order produced by the petitioner with reference to the similar issue for the years 2007-2008 and 2008-2009 in respect of the appeals pending before the Deputy Commissioner (Appeals, it is for the respondent to proceed further in recovering the amounts as per the provisions of Section 19(4) of the TNVAT Act, and therefore, there is no infirmity in the impugned orders passed by the respondent.

6. It is not in dispute that the petitioner is a registered dealer on the file of the respondent and had been filing Returns as required under the provisions of the TNVAT Act regularly on self-assessment basis. The Returns filed by them for the years 2009-2010 and 2010-2011 were accepted in terms of Section 22 of the TNVAT Act. While so, the petitioner was issued with the PRN, dated 6.3.2013 on the basis that the petitioner has, without reversing the ITC, removed the goods on stock transfer basis to the other States in India and the PRN sought to invoke Section 19(4) of the TNVAT Act for reversal of the ITC amounts. Accordingly, the respondent proceeded to recovery the necessary amounts by passing the impugned orders.

7. The learned Senior Counsel appearing for the petitioner pleaded that whatever be the proceedings initiated by the respondent, the same could be proceeded only after receipt of the objections from the petitioner, for which, the petitioner, in their replies/letters, dated 15.3.2013, requested ten days" time, and without even taking a decision either to accept or reject the request, the respondent proceeded to recover the amounts as if there is no stay granted by the appellate authority in respect of the appeals preferred in respect of the orders made for the earlier assessment years.

8. On a perusal of the impugned order, it reveals that a reference has been made to the respondent"s Office Notices, dated 6.3.2013 and 15.3.2013. There is also a reference in the impugned order that the petitioner has filed replies, dated 15.3.2013 seeking time to file their objections. When such a request has been made by the petitioner, the same has to be looked into by the respondent by taking appropriate decision. The objections are to be filed by the petitioner-dealer as required under the provisions of the TNVAT Act and only thereafter, it is incumbent on the part of the respondent to proceed further in the matter. On the other hand, construing that there is no order of stay in respect of the appeals pending before the appellate authority challenging the orders of the earlier assessment years, the respondent observed that the demand raised now is open for recovery and accordingly ordered recovery of the amounts. Such a course adopted by the respondent without considering the objections of the petitioner, is not sustainable. For the foregoing reasons, the Writ Petitions are disposed of, with a direction to the petitioner-Company to file their objections to the pre-revision notices, dated 6.3.2013, within a period of two weeks from the date of receipt of a copy of this order and on receipt of the same, the respondent shall proceed further in the matter, afford an opportunity of hearing to the petitioner and then pass appropriate orders, on merits and in accordance with law, within a period of four weeks from the date of receipt of such objections from the petitioner. Till the orders are passed by the respondent on the said objections, there shall be an order of status-quo as on today, to be maintained by the parties. No costs. The Miscellaneous Petitions are closed.