(2014) 02 MAD CK 0023

In the Madras High Court

Case No : W.P. Nos. 6102, 6103 of 2014 and M.P. No. 1 of 2014

Wheels India Limited — APPELLANT

Vs

Assistant Commissioner (CT), (FAC) Anna Salai-II Assessment Circle — RESPONDENT

Date of Decision : 28-02-2014

Acts Referred:
Central Sales Tax Act, 1956 — Section 8 8(1)
Tamil Nadu Value Added Tax Act, 2006 — Section 19 19(2) 19(2)(v)

Citation : (2015) 83 VST 523

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : N. Prasad, Advocate for the Appellant; S. Kanmani Annamalai, Additional Government Pleader, Advocate for the Respondent;

Judgement

V. Ramasubramanian, J.

1. The short ground on which the petitioner has come up with the above writ petitions challenging the orders of reversing the input-tax credit, is that their applications for advance ruling are pending before the concerned authority. Heard Mr. N. Prasad, learned counsel for the petitioner. Mr. S. Kanmani Annamalai, learned Additional Government Pleader (Taxes) takes notice for the respondent.

2. The petitioner is engaged in the manufacture of wheels and air-suspension automobile components. They claim that they purchased goods, which fall under Sl. No. 67 of Part B of the First Schedule to the Tamil Nadu Value Added Tax Act, 2006 (in short, "the Act"). These goods are industrial inputs, with which, the petitioner manufactures other goods. Therefore, claiming that the resultant goods are sold in the course of inter-State trade, rated under section 8(1) of the Central Sales Tax Act, 1956, against C form declaration, the petitioner had the benefit of some input-tax credit.

3. But, after the amendment brought forth by the Tamil Nadu Act 28 of 2013, by which, a proviso was inserted under section 19(2)(v) to the Tamil Nadu Value Added Tax Act, 2006, the petitioner was served with notices dated December 18, 2013 and January 20, 2014 threatening to reverse the input-tax credit. The petitioner filed its objections on January 6, 2014 and February 6, 2014. But, overruling the objections, the respondent served the impugned orders dated January 21, 2014 and February 7, 2014, challenging which, the petitioner has come up with the above writ petitions.

4. Section 19(2) of the Act, together with the proviso inserted under clause (v), reads as follows:

"19. Input tax credit.-- (1) . . .

(2) Input tax credit shall be allowed for the purchase of goods made within the State from a registered dealer and which are for the purpose of--

(i) resale by him within the State; or

(ii) use as input in manufacturing or processing of goods in the State; or

(iii) use as containers, labels and other materials for packing of goods in the State ; or

(iv) use as capital goods in the manufacture of taxable goods;

(v) sale in the course of inter-State trade or commerce falling under sub-section (1) of section 8 of the Central Sales Tax Act, 1956:

Provided that input tax credit shall be allowed in excess of three per cent of tax for the purpose specified in clause (v);

(vi) agency transactions by the principal within the State in the manner as may be prescribed.

(3) . . ."

5. As stated earlier, the petitioner is a manufacturer. But, the goods manufactured by them are sold in the course of inter-State trade or commerce, under section 8(1) of the Central Sales Tax Act, 1956. Therefore, the assessing authority took a position that the case of the petitioner would fall under clause (v) of sub-section (2) of section 19 and that therefore, the proviso inserted by the amendment would apply to them. This is why, in the notice dated January 20, 2014, the respondent called upon the petitioner to claim the input-tax credit in excess of three per cent and reverse the credit up to three per cent.

6. But, the contention of the petitioner is that their case would fall under clause (ii) and not under clause (v) of sub-section (2) of section 19. However, the petitioner found that the language of clauses (ii) and (v) was little unclear. Therefore, the petitioner filed an application before the Advance Ruling Authority under section 48A of the Act. But, even before the Advance Ruling Authority

could decide this issue, the respondent threatened to enforce the demand, forcing the petitioner to come up with the above writ petitions, in respect of two months namely November and December 2013.

7. A careful look at clause (ii) would show that the same deals with purchase of goods used as input in manufacturing and processing of goods in the State. In contrast, clause (v) deals with sale in the course of inter-State trade or commerce. Interestingly, clause (ii) uses the expression "manufacturing or processing", but not the expression "sale in the course of inter-State trade or commerce". On the contrary, clause (v) uses the expression "sale in the course of inter-State trade or commerce", but not the expression "manufacturing or processing".

8. If at least the expression "sale" had been used in clause (ii), one can conclude that clause (ii) applies only to manufacture and sale within the State. Alternatively, if at least the expression "manufacture" had been used in clause (v), one can conclude that clause (v) covers the manufacture and sale in the course of inter-State trade or commerce and not manufacture and sale within the State. But, both these clauses omit the expressions essential for the interpretation that the parties want to view to the proviso to clause (v). While the petitioner wants to read into clause (ii), the expression "sale", the respondent wants to read into clause (v), the expression "manufacture". Therefore, if one is wrong, the other is also wrong and if one is right, the other should also be right.

9. In the light of the above confusion, the petitioner did the right thing by making an application to the Advance Ruling Authority. As a matter of fact, it is only cases of this nature that qualify for an advance ruling and hence, the respondent ought to have waited for a decision on this legal issue. Since the respondent did not wait, the petitioner is justified in coming up before this court. What is more important is the fact that the impugned orders do not disclose as to how the respondent had resolved this legal conundrum. Therefore, the impugned orders suffer from non-application of mind and are liable to be set aside. In view of the above, the writ petitions are allowed, the impugned orders are set aide and the matter is remitted back to the respondent. Within a period of four weeks from the date of receipt of a copy of this order, the Advance Ruling Authority shall render a ruling on the issue raised by the petitioner. Thereafter, considering the advance ruling issued by the concerned authority, the respondent shall pass orders afresh. A copy of this order shall be forwarded by the parties, to the Advance Ruling Authority. No costs. Consequently, the above MPs are closed.