IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.06.2015

CORAM:

The Honourable Mr. Justice S.VAIDYANATHAN

Writ Petition No.33705 of 2014
And M.P.No.1 of 2014
Reserved on 24.03.2015

M/S. Total Oil India Pvt Ltd
rep by Chief Financial Officer
Mr.Guy Nicholas Mansfield
No.131/IAIAB2A1A1, Puzhuthivakkam,
Chitalamangalam Village
Madurantagam,
Kancheepuram District … Petitioner

Versus

The Assistant Commissioner (CT)
Madurantagam Assessment Circle,
No.5, Car Street, Madurantagam,
Kancheepurama District … Respondent

Prayer: This writ petition has been filed, praying for the issuance of the writ of certiorari, to call for the records comprised in the impugned provisional Order in TIN No.33571681273/2014-15 date 28.11.2014 on the file of the respondent, quash the same.

For Petitioner : Mr.Mohammed Shaffiq

For Respondents : Mr.V.Haribabu AGP (Tax)

ORDER

This Writ Petition has been filed, praying for the issuance of writ of certiorari, to call for the records comprised in the impugned provisional Order in TIN No.33571681273/2014-15 date 28.11.2014 on the file of the respondent and quash the same.

2. The petitioner, M/s.Total Oil India Pvt. Ltd., is engaged in the business of importing and selling Liquid Petroleum Gas (LPG) and Lubricants (Lubes) within the state as well as outside of the state i.e., interstate sales falling under Commodity Code '2067-

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Industrial inputs' of Part B of Schedule-I liable to tax at 5% and also under Commodity Code '301'- Any other goods, not specified in any of the schedules' Part C of Schedule-I liable to tax @ 14.50%, when sold to non-industrial consumers i.e., otherwise than by way of "Industrial Inputs". The petitioner is a registered dealer under Tamil Nadu Value Added Tax Act, 2006 (in short ''TNVAT Act'') and Central Sales Tax Act, 1956 bearing TIN No.33571681273 and 721549, respectively having its registered office at Mumbai.

3. By Provisional Assessment Notice dated 24.10.2014, the respondent is proposed to levy tax @ 14.50% on total turnover instead of 5%, stating that since the entire purchase effected by the dealer is 14.5% items, the sales effected by the dealer will also be 14.5% items only and the dealer themselves have mentioned Commodity Code No. as 301 which is taxable at 14.50% as per entry 69 of the Part "C" of the First Schedule and that for the months of April and May '2014, though the dealer had mentioned Commodity Code as 2067 for the sales effected at 5%, the dealer has not filed certificate as required under Rule 6(3)(b) of the TNVAT Rules 2007. Apart from this, the respondent has also proposed to levy penal interest in terms of Section 42(3) of TNVAT Act 2006. Hence, the respondent called for objections from the petitioner to the said notice. It appears that the petitioner has raised objections for the proposed levy and higher rate of tax and penal interest thereof.

4. According to the petitioner, for the disputed period, they filed returns claiming sales of LPG at the rate of 5% as 'Industrial Inputs', but in the returns, they have inadvertently entered the Commodity Code as 301 meant to cover items falling under residuary entry i.e., 69 of Part-C of the First Schedule to the TNVAT Act instead of Code 2067 which covers industrial inputs under Entry 67 of Part B of the First Schedule of TNVAT Act. It is stated that it is only a typographical error and infact they had collected taxes only at the rate of 5% from their customers and filed returns disclosing the rate of tax at the rate of 5%. As regards enclosure of certificate required under Rule 6(3)(b) of the Tamil Nadu Value Added Tax Rules, 2007 (in short, TNVAT Rules, 2007), the petitioner has stated that it is not mandatory to enclose every month and there is not time limit prescribed in the said Rule.

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5. However, having considered the objections raised by the petitioner, by proceedings dated 28.11.2014, the respondent has passed the impugned order, in and by which, the proposal made in the Provisional Assessment Order dated 24.10.2014 has been confirmed. Aggrieved by the said order, the petitioner has come forward with the present writ petition.

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6. Heard both sides and perused and records.

7. It appears that a provisional assessment notice was issued to the petitioner, dated 24.10.2014, proposing to levy higher rate of tax at 14.5% for the sales turnover of Rs.111,21,85,828/- for the period from April 2014 to September, 2014 inasmuch as, the petitioner had failed to produce the Certificate required under Rule 6(3)(b) of the TNVAT Rules, 2007 in their monthly returns. It was also proposed to levy penal interest under Section 42(3) of TNVAT Act, 2006 and thereby, objections were called for from the petitioner. Pursuant to the same, the petitioner had filed their objections. However, while rejecting the objections, the respondent has passed the impugned order, dated 28.11.2014, confirming the proposals made in the notice dated 24.10.2014.

8. By Circular in Lr.VAT CELL/21797/07 (VCC No.968), dated 1.8.2007, clarification regarding under TNVAT Act, 2006 in respect of rate of tax on LPG, has been issued by the Commercial Tax Department, wherein, it has been specifically stated that if LPG sold to caterers/hoteliers paying tax under Section 7(D)(b), it is taxable at 12.5% and if sold to hoteliers paying tax under Section 7(i)(a) of the TNVAT Act, 2006 and to manufacturing industries, is taxable at 4% as it could be considered as industrial input for which certificate from the customer under Rule 6(3)(b) of the TNVAT Rules is required, failing which, it is liable to tax at 12.% under Part C of I Schedule to the TNVAT Act, 2006.

9. Therefore, in order to claim concessional rate of tax at 4% as industrial input, it is mandatory on the part of the dealer, to produce the certificate from the customer to whom, LPG was sold as industrial input, as contemplated under Rule 6(3)(b) of the TNVAT Rules. In the present case, admittedly, the petitioner has not appended the said certificates, however, claimed concessional rate of tax.

10. According to the learned counsel for the petitioner, in the returns filed for the assessment period April, 2014 to September, 2014, commodity code was inadvertently entered as 301, meant to cover items falling under residuary entry, viz., Entry 69 of Part C of the First Schedule to TNVAT Act, instead of code 2067 which covers industrial inputs under Entry Part B and mere entering a wrong commodity code, the petitioner cannot be stopped from claiming the correct rate of tax nor the authority usurp jurisdiction to levy higher rate of tax. He contended that in fact, the petitioner had collected taxes only at the rate of 5% from its

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customers and filed its returns disclosing the rate of tax @ 5% and that nowhere under Rule 6(3)(b), it has been insisted that the certificate from the customer has to be appended for every month in order to claim concessional rate of tax towards industrial inputs and there is no time limit prescribed within which, the certificate has to be enclosed. Therefore, the learned counsel would contend that without considering these aspects which were raised in their objections, the authority has passed the impugned proceedings contrary to the Clarification made under Circular, dated 1.8.2007 cited supra, which is binding upon the authority and therefore, the same cannot be sustained.

11. A perusal of the impugned proceedings, it is revealed that the respondent has considered the objections raised by the petitioner and rejected, stating that inadvertent selection of commodity or typographical error, said to have been occurred in filing of the returns by the petitioner, deserves no consideration since, the petitioner must have battalion of picked personalities, who are veterans beyond distinction in the matters of taxes and that the petitioner had failed to furnish copy of the certificates from the customers as contemplated under Rule 6(3)(b) of the TNVAT Rules for claiming concessional rate of tax on industrial inputs and there was no hinder for the petitioner to get such certificates from its customers since they can be easily obtained by mere click of mouse. The reasons given by the respondent for rejecting the objections raised by the petitioner, in my opinion, may be reasonable, but not merit worthy. It has been consistently contended by the petitioner that they have inadvertently entered the commodity code and that they have actually collected only @ 5% from their customers and there was no time limit prescribed under Rule 6(3)(b) of TNVAT Rules for filing the certificates and it should be every month. Since there is no time limit prescribed in the Rule, it can be held that the petitioner can file the certificates by the end of the assessment year. I find a considerable force in the contention of the petitioner. Hence, in order to give a fair opportunity, I am of the view that the petitioner can be permitted to file the documents afresh by quoting correct code of commodity as well as by furnishing all the certificates required under Rule 6(3)(b) of the TNVAT Rules, 2007, subject to certain condition.

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12. Accordingly, the petitioner is directed to file the documents afresh by quoting correct code of commodity as well as by furnishing all the certificates required under Rule 6(3)(b) of the TNVAT Rules, 2007, subject to the condition that the petitioner shall deposit 10% of the admitted tax liability, within a period of four weeks from the date of receipt of a copy of this order. On such compliance by the petitioner, the respondent is directed to

consider the same and pass appropriate orders afresh, after affording an opportunity to the petitioner, within a period of four weeks thereafter. Consequently, the impugned order, dated 28.11.2014 is set aside. If the petitioner fails to comply with the above, the respondent is at liberty to proceed in accordance with law. No costs.

In the result, the Writ Petition is allowed on the above terms. No costs. Consequently, connected MP is closed.

Sd/-

Asst.Registrar (CS III )

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Sub Asst. Registrar

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To

The Assistant Commissioner (CT)
Madurantagam Assessment Circle,
No.5, GST Road, Madurantagam,
Kancheepuram District

W.P.No.33705 of 2014

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