

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12.2.2015.

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.3540 of 2015

and

M.P.No.1 of 2015

Mahindra & Mahindra Limited
Rep by Shri R.K.Sairam
Manager CI & S Accounts - Admn.
Mahindra Towers 1st Floor
No.17/18 Patullos Road
Chennai 600 002

Petitioner

vs.

- 1 The Joint Commissioner (C.T)
Large Tax Payers Unit
5th Floor Dugar Towers
No.34 Marshall Road
Chennai 600 008
- 2 The Deputy Commissioner(C.T)-II
Large Tax Payers Unit
5th Floor Dugar Towers
No.34 Marshall Road
Chennai 600 008

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records in Order RP No.5/2014 dated 30.12.2014 passed by the 1st respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.V.Haribabu, AGP (T)

ORDER

Petitioner has come forward with the aforesaid prayer.

2. The petitioner has preferred a revision petition under section 54 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'the Act') against the provisional assessment under section 25

of the said Act. When the original order was passed by the Deputy Commissioner on 20.1.2014, the petitioner preferred a writ petition before this court in W.P.No.9044 of 2014 and by order dated 27.3.2014, the said writ petition was disposed of. The writ petition was disposed of on the ground that the petitioner had already filed revision against the original order and the writ petition is not maintainable and it is open to raise all the grounds before the revisional authority and the revisional authority shall consider the same on merits. The petitioner was also directed to deposit 25% of the disputed tax on 15.4.2014 instead of 50%. The petitioner has paid 25%. At this distance of time, the petitioner contended that there is no need for him to pay any amount and it is only the provisional assessment under section 25 of the aforesaid Act as the assessment year was not over. Since the amount has already been paid pursuant to the order of this court, I am not going into the factual aspect of the same.

3. The revision petition has been filed challenging the levy of higher rate of tax at 14.5% on the sale of UPS on the ground that it is a residuary commodity he contended that before the assessing officer that the goods are Information and Technology product and the objections have been overruled in the writ petition the petitioner has stated that the said produce is falling under item 27 - "Uninterrupted Power Supply" under entry 67 of Part B of the First Schedule and liable to tax at lower rate of 5%. They placed reliance on a test report of the Standardization Testing and Quality Certification Directorate, Electronics Regional Test Laboratory (North), Department of Information Technology, New Delhi as per which their products are classified as "Digital UPS". They also drew attention to the earlier order of this court wherein a levy of higher rate of tax on toner cartridges was set aside on the grounds that the said goods are information technology products and they would fall within a specific entry in any of the schedules and they should not be relegated to the category of residuary commodity. Hence, they contended that higher rate of tax imposed by the assessing officer which has been confirmed by the revisional authority is not correct and it has got to be interfered with. The assessing officer observed that the goods dealt by the petitioner under the nomenclature of "Home UPS" are nothing but inverters and could not be classified as "UPS" which is an entry under the category of IT products finding place in entry 67 of Part B of the first schedule. The original authority had also taken a view that test report has not been filed by the petitioner to hold that the product is an IT product. In the revision, they enclosed a photostat copy of the test report which was not accepted by the revisional authority. The revisional authority held that it is not an independent report. It does not satisfy the standard specifications. The test report only specifies the adherence of the petitioner's product to the claimed specifications and standards and could not be held to be a validation

of their claim of classification of their product as an IT product. The authority came to the conclusion that the product referred to by the petitioner as "Home UPS" and digital "Digital UPS" is nothing but an inverter and can be distinguishable from UPS. An UPS in common, in common parlance, is understood to be a power back up for computers and inverter, on the other hand, is understood by the common man to be a power back up for homes, offices, etc.

4. The authority, in the revisional order, has observed as follows:-

"6. In considering this aspect, it is vital to refer to the relevant entry in the schedule. Entry 67 under Part B of the First Schedule reads as 'Information Technology products as notified by the Government'. This entry could be read in two ways to mean either only information technology products recognized as such by the Government or to any or all products that are notified as information technology products by the Government. If the former sense is taken, then it would mean that even any of the commodity recognizable information technology products could be kept out of this entry if the government does not notify them to be so. If the latter sense is adopted, then it would mean that the Government is competent to notify any commodity as information technology product even if it is not commodity understood to be so in public parlance. Either construction would mean that the entry is not a definitive classification but is either inclusive or restrictive in nature. Therein, the intention of the Government to place a commodity within or outside the entry becomes a paramount consideration. For example, mobile phones were till recently held to be IT products and found place in the aforesaid entry, but were subsequently moved to a separate entry with a higher rate of tax. Therefore, policy considerations do assume a role in inclusion of the commodities within the ambit of a specific entry or their specific exclusion from within.

7. For this reason, since the ability to distinguish the commodities of UPS and inverters (now called Home UPS/Digital UPS) in common parlance is possible and extent even while the technical similarities are also to be considered given that both products differ only in scale of utility, the ambiguity is to be resolved by ascertaining whether

the goods are to be treated on a par with UPS and, therefore, not required to be slotted under a specific entry by name or whether they are not IT products as commonly understood. The decision is best left to the competent authority to resolve.

8. Under Section 48A of the TNVAT Act, the Authority for Clarification and Advance Ruling has been constituted and endowed with the power to clarify on any point concerning the rate of tax. The petitioners are directed to seek clarification from the said authority by making an application as required therein. Meanwhile, the assessing officer shall not enforce collection of the balance amount of tax which has been stayed during the pendency of the revision petition. Once the ACAAR gives its ruling, the collection of the same or refund of the amount already paid may be decided and appropriate orders passed by the assessing officer according to the ruling given by the authority. The revision petition is disposed off on the above terms."

5. In reply, Mr. Haribabu, learned Additional Government Pleader (Taxes) contended that pursuant to the orders of this court in W.P.No.9044 of 2014, a detailed order has been passed by the Joint Commissioner viz., the revisional authority. If the petitioner has got any grievance, he should invoke section 55 of the said Act as a detailed order has been passed under section 54(3) of the Act.

6. For the sake of convenience, section 54(3) and 55 are extracted below:-

"Section 54(3): On admitting an application for revision, the Joint Commissioner may call for an examine the record of the order or proceeding against which the application has been preferred and may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, pass such order thereon as he thinks fit.

Section 55(1): Special powers of Additional Commissioner -- The Additional Commissioner may, of his own motion, call for and examine any assessment deemed to have been made under sub-section (2) of Section 22 or an order passed or proceeding recorded by the appropriate authority under sub-sections (4), (5) and

(6) of Section 22 or Sections 24, 25, sub-sections (1), (2), (3) and (4) of Section 27, Section 28 or Section 29 or an order passed by the Joint Commissioner under sub-section (1) of Section 53 or sub-section (3) of Section 54, and if such assessment or order or proceeding recorded is prejudicial to the interests of revenue, may make such inquiry or cause such inquiry to be made and, subject to the provisions of this Act, may initiate proceedings to revise, modify or set aside such assessment or order or proceeding and may pass such order thereon as he thinks fit."

7. The learned Additional Government Pleader also contended that when a test report is filed by the petitioner, the petitioner cannot contend that it should be accepted by the revisional authority. This court directed the revisional authority to consider the case of the petitioner on merits and decide the same and while deciding the same, the revisional authority has decided not to accept the test report, which according to the revisional authority, is not acceptable and the subjective satisfaction of the authority cannot be questioned by way of writ petition more particularly, when he has power under section 54 of the Tamil Nadu Value Added Tax Act, 2006. Whether the certificate produced by him is genuine or not or should be accepted by the authority or not are all depending upon the facts of the case. Merely because another view is possible, it does not mean that the view taken by the revisional authority is incorrect.

8. The scope of interference under Article 226 of the Constitution of India is very limited as decided by the Honourable Supreme Court in AIR 1964 SC 477. Further, the view taken by the revisional authority may not be accepted by the authority under section 55. But, asking this court to interfere with the order under section 54 and direct the authority to accept the report is not correct and this court is not inclined to accede the request of the petitioner. since the petitioner has got a remedy under section 55 of the Act.

9. The observation made in this order is only for deciding the writ petition and it will not have any bearing on the Additional Commissioner, while deciding the petition that may be filed by the petitioner under section 55 of the Act. The writ petition is disposed of accordingly. No costs. The connected miscellaneous petition is closed.

10. The petitioner requested time to file petition under section 55 of the Act and also prayed that time may be fixed for the authority to dispose of the same. Accordingly, the petitioner is permitted to file the petition under section 55 of the Act within four weeks from the date of receipt of copy of this order and on

receipt of such application, the authority under section 55 shall pass orders on merits within a period of two weeks from the date of receipt of the application strictly in compliance with the principles of natural justice and in terms of the provisions of section 55 of the Act.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssk.

To

1 The Joint Commissioner (C.T)
Large Tax Payers Unit
5th Floor Dugar Towers
No.34 Marshall Road
Chennai 600 008

2 The Deputy Commissioner(C.T)-II
Large Tax Payers Unit
5th Floor Dugar Towers
No.34 Marshall Road
Chennai 600 008.

1 cc to M/s.Joseph Prabakar, Advocate, SR.No.7946

1 cc to Spl.GP(T) Government Pleader, Sr.No7709

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