THE HON'BLE SRI JUSTICE K.C. BHANU

AND

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Special Appeal No.24 of 2004

JUDGMENT: (per Hon'ble Sri Justice M. Seetharama Murti)

This appeal under Section 23(1) of the Andhra Pradesh General Sales Tax Act, 1957 ('the Act' for short) read with Rule 41 of the Rules under the said Act by the appellant/dealer is directed against the orders dated 24.03.2004 of the Commissioner of Commercial Taxes in CCT's.Ref.L.III(2)/679/2002.

2. We have heard the submissions of the learned counsel for the appellant/dealer and the learned Special Standing Counsel for Commercial Taxes. We have perused the material record.

3. The facts, which are necessary for consideration, in brief, are as follows: - 'The appellant/dealer is the assessee on the rolls of the Commercial Tax Officer, M.G. Road Circle ('the CTO' for brevity) and was finally assessed by the said officer for the year 1998-99. Aggrieved of the orders dated 28.11.2000 of the CTO, the appellant had preferred an appeal before the Appellate Deputy Commissioner (CT), Panjagutta (for brevity 'the ADC') disputing the tax liability on the turnover of Rs.1,66,01,301/- relating to sales returns. Admittedly, the goods returned related to the sale transactions affected during the preceding year of assessment viz., 1997-98. The appellant did not claim exemption on the said turnover towards sales returns in the appropriate assessment year 1997-98. The appellant had claimed in the year 1998-99, the exemption on the said turnover related to sales returns pertaining to the year 1997-98. As the sales returns related to the sales affected during the preceding assessment year 1997-98, the CTO had not considered the claim of the appellant while passing the assessment orders for the year 1998-99. However, the fact remains that the CTO had denied the exemption on the disputed turnover relating to sales returns only on the ground that the sale transactions related to the preceding assessment year, but, not to the current assessment year 1998-99. However, the CTO did not reopen the assessment for the year 1997-98 by following the provision of Rule 50 of the Act and had not extended the benefit of exemption. As such, the ADC, while allowing the appellant's appeal, had directed the CTO to reopen the assessment for the year 1997-98 and grant the necessary relief to the extent of the aforementioned disputed turnover under Rule 50 of the Rules after examining the necessary evidence. The Commissioner had entertained a revision *suo motu* in exercise of the powers vested in him under Section 20(1) of the Act and had proposed to revise the said orders of the ADC as he was of the view that the view taken by the ADC is prejudicial to the interests of the revenue of the State. Finally, the Commissioner by his impugned orders had set aside the orders of the ADC and had restored the orders of the CTO. Therefore, the aggrieved appellant/dealer is before this Court.'

4. Now the only point for determination is:

Whether the appellant/dealer is entitled to seek deduction in respect of sales returns in the relevant assessment year 1997-98 in which the sales of the returned goods had taken place despite the fact that the assessment for that year 1997-98 is completed?

5. The learned counsel for the appellant would contend as follows: - 'By a *bona fide* mistake and for the reasons that the goods sold were returned in the succeeding assessment year, the exemption was claimed in the succeeding year in stead of in the relevant year and that therefore, the ADC was right in giving the appropriate directions to the CTO to reopen the assessment of the relevant year 1997-98 and give the relief to the appellant. The necessary conditions for claiming the deduction are satisfied in the case of the appellant. The goods were returned within the statutory time from the date of delivery; and, necessary entries were also made in the accounts of the assessee; and, the claim was also made within the statutory time. As all the conditions were satisfied, the turnover related to the sales returns goods is deductible from the total turnover of the appellant related to the year 1997-98 as the goods were actually sold in that year. The appeal may be allowed.'

6. On the other hand, the learned Special Standing Counsel would contend that the conditions required for claiming the benefit are not satisfied and that the ADC while revising the assessment order of the CTO for the assessment year 1998-99 had no jurisdiction or authority to give a direction to the CTO to revise the assessment of the previous year 1997-98 and that therefore, the said order is not a valid and legal order and that the Commissioner had rightly exercised the *suo motu* powers of revision and had restored the orders of the CTO while setting aside the erroneous orders of the ADC.

7. We have bestowed our attention to the facts and the submissions.

8. The facts are not in dispute. The sales related to the assessment year 1997-98 to an extent of Rs.1,66,01,301/- were not accepted by the purchasers of the appellant. The appellant, therefore, ought to have claimed the relief against the returned sales turnovers in that assessment year 1997-98. Under a bonafide impression and as the rejection or sales returns had taken place in the year 1998-99, the appellant had claimed the relief in the said year, which is the subsequent year. The law is well settled that the deduction towards sales returns can only be made from the total turnover of the assessment year in which the goods that are returned were actually sold. Such deduction cannot be claimed from the total turnover of the succeeding assessment year. Therefore, the CTO was right in rejecting the claim made in the year 1998-99 as the sales returns turnover related to the preceding assessment year 1997-98. However, the CTO had failed to reopen the assessment for the year 1997-98 and extend the benefit to the appellant/dealer. Therefore, the ADC while allowing the appeal of the appellant had directed the CTO to reopen the assessment for the year 1997-98 and to give the relief, if upon the evidence produced, the appellant is entitled to such a relief. The Commissioner, having exercised the *suo motu* powers of revision, had set aside the said orders of the ADC.

9 . In the decision in **Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M/s.Motor Industries Co., Ernakulam** the facts are as follows: - 'The assessing authority had disallowed the claim in respect of the value of goods, which had been returned, on the ground that the claim related to the sales completed in the previous assessment year i.e., 1972-73. The assessee's appeal in respect of sales returns was allowed to the extent of turnover of goods returned within the period of three months from the date of sale. The further appeal was dismissed by the appellate tribunal. The revision preferred before the High Court of Kerala was also dismissed.' In the above stated factual background, the Supreme Court had held as follows:-

> **'The two important conditions which have to be satisfied for claiming the deduction under Rule 9(b)(i) are that the goods in question must have been returned within three months from the date of delivery and that necessary entries are made in the**

accounts of the assessee. If these conditions are satisfied, the amount allowed to the purchaser for the returned goods would be deductible from the total turnover. …….' 'Any deduction that can be made under Rule 9(b)(i) of the Rules can only be made from the total turnover of the assessment year in which the goods that are returned within three months of the date of delivery were actually sold. Such deduction cannot be claimed from the total turnover of the succeeding financial year.' ……. 'This, however, need not present much difficulty as an assessee in that position can always file a revised return and claim deduction or even if assessment is completed, demand adjustment or refund by preferring the claim in time. The learned counsel for the Department states that such an adjustment or refund can be claimed by an assessee.'…….. 'We are, however, of the view that even in the absence of such an amendment, the deduction in respect of 'sales return' has to be allowed in the assessment relating to the financial year in which the sales of the returned goods had taken place and even where assessment for that year is completed, the Department has to comply with the demand for adjustment or refund by making necessary rectification in the order of assessment, provided that other conditions are satisfied, as that is the inevitable consequence of Rule 9(b)(i), which allows deduction of the value of the goods returned within three months from the date of their delivery from the total turnover of that assessment year'.

The above decision was rendered as per the Kerala General Sales Tax Rules, 1963, which are applicable to the facts of that case. In the case on hand, goods of the value of Rs.1,66,01,301/- were brought to tax after including their turnover in the total turnover relating to the assessment year 1997-98. Subsequently, assessment for the succeeding year 1998-99 was taken up. In that assessment year the appellant had claimed that the said value of the returned goods shall be excluded from the turnover. The assessing authority had rightly declined to do so as the disputed turnover related to the previous assessment year.

10. It is necessary to refer to the relevant provisions of Rule 6 of the Rules made under the Act, which reads as under:

"6. The tax or taxes and surcharge under sections 5, 5-A, 5-B, 5-C, 5-E, 6, 6-A and 6-C or notified under section 9(1) shall be levied on the net turnover of a dealer. In determining the net turnover, the amounts specified in clauses (a) to (l) shall, subject to the conditions specified therein, be deducted from the turnover of a dealer -

(a) * * *

(b) (i) all amounts allowed to purchasers in respect of goods returned by them to the dealer when the goods are taxable on sales provided that the goods were returned within a period of six months from the date of delivery of the goods and the accounts show the date on which the goods were returned and the date on which and the amount for which refund was made;

> **(ii) all amounts received from the sellers in respect of goods returned to them, by the dealer, when the goods are taxable on the purchase value provided that the goods were returned within a period of six months from the date of delivery of the goods and the accounts show the date on which the goods were returned and the date on which and the amount for which refund was received :**
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> **Provided that the claim for deduction on account of such returned goods shall be admissible if it is preferred within a period of six months from the date on which the goods sold have been received or the goods purchased have been returned as the case may be."**

The claim for deduction should also satisfy the requirement of the Rule 50(4) of the Rules, which reads as follows: –

> **"Any assessing authority may at any time within one year from the date of service of an assessment order passed by him, revise the order, in respect of the claim for deduction on account of returned goods, referred to in clause (b) of rule 6, where the claim for deduction is received after the final assessment has been made provided that the claim for deduction on account of such returned goods is preferred within a period of six months from the date on which the goods sold have been received back or the goods purchased have been returned as the case may be."**

The claim for deduction should satisfy all the requirements of the provisions of law. As already noted, the claim for deduction on account of return of goods, referred to in clause (b) of Rule 6, can be permitted to be made only out of the turnover relating to the assessment year in which the value of the returned goods was included provided such claim is preferred in due compliance with the other requirements of the said provisions of law. Deduction cannot be given in any other assessment year. Coming to the facts of this case, it would mean that this deduction should be made only from the turnover for the assessment year 1997-98 provided the other requirements of the provisions of the law are satisfied. However, in case the claim is made perfectly and in time the assessment relating to the assessment year 1997-98 can be reopened and the claim have to be considered on merits and necessary revised orders have to be passed. Therefore, the orders of the ADC which are in accord with the law, which is obtaining, cannot be said to be faulty. Hence, the impugned order deserves to be set aside.

11. For the above reasons we find merit in the appeal and therefore, we allow the appeal and set aside the orders of the respondent and direct the CTO to reopen the assessment of the appellant for the year 1997-98 and consider the claim of deduction in regard to the turnover of Rs.1,66,01,301/- relating to the returned goods (sales returns) and pass necessary orders in case the claimant is able to satisfy that the claim in this regard is made within the time allowed under law and the same is otherwise in accordance with the law. The CTO is at liberty to take further necessary material evidence, if any, that may be produced by the claimant and dispose of the matter on merits within three months from the date of the receipt of a copy of this judgment.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

K.C. BHANU, J

M. SEETHARAMA MURTI, J

18th March 2015

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