

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.10182 and 10183 of 2015
and
M.P.Nos.1 and 1 of 2015

Hindustan Unilever Limited
(rep. by its Regional Indirect Taxation
Manager (South & East) Mr.Y.Mani)
'Ponds House',
101, Santhome High Road,
Chennai - 600 028. ... Petitioner in both W.Ps

Vs

1. The Deputy Commissioner (CT)-II,
Large Taxpayers Unit,
'Dugar Towers', Fifth Floor,
34, Marshalls Road, Egmore,
Chennai - 600 008.
2. The Joint Commissioner (CT) Appeals,
III Floor, CT Building Annexe,
Greens Road,
Chennai - 600 006. ... Respondents in both W.Ps

Prayer in W.P.No.10182 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent herein in N.Dis.128/2015/A1 dated 19.02.2015 preferred against the proceedings of the first respondent herein in TIN:33410802250/2007-08 dated 10.10.2014 and quash the same, while directing the second respondent herein to hear and dispose the appeal filed by the petitioner against the proceedings of the first respondent herein in TIN:33410802250/2007-08 dated 10.10.2014 on merits and in accordance with law.

Prayer in W.P.No.10183 of 2015: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent herein in N.Dis.111/2015/A1 dated

23.02.2015 preferred against the proceedings of the first respondent herein in TIN:33410802250/2008-09 dated 10.10.2014 and quash the same, while directing the second respondent herein to hear and dispose the appeal filed by the petitioner against the proceedings of the first respondent herein in TIN:33410802250/2008-09 dated 10.10.2014 on merits and in accordance with law.

For Petitioner : Mr.N.Sriprakash
in both W.Ps

For Respondents : Mr.Manokaran Sundaram
in both W.Ps Additional Government Pleader

COMMON ORDER

Heard Mr.N.Sriprakash, learned counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondents and with their consent, the writ petitions are taken up for disposal.

2.The petitioner has filed these writ petitions challenging the orders passed by the second respondent, who is the Appellate Authority before whom the petitioner had filed appeals as against the order of assessment dated 10.10.2014 for the assessment year 2007-08. The petitioner did not question the assessment order in its entirety and disputed the turnover only to the extent of Rs.622,62,547/-. In so far as the turnover relating to a sum of Rs.1369317498/- and Rs.1340758140/-, the petitioner had filed writ petitions before this Court in W.P.Nos.28818 and 28819 of 2014 challenging the assessment orders only that extent.

3.The explanation given by the learned counsel appearing for the petitioner is that with regard to the said turnovers, the petitioner has questioned the orders of assessment on serious violation of principles of natural justice and that the Assessing Officer had pre-decided the matter and he was implementing the direction issued by the Enforcement Wing Officials that in spite of the petitioner having furnished a second explanation along with the Chartered Accountant's certificate giving full details, the Assessing Officer ignored the explanation and completed the assessment stating that the petitioner has produced only the Chartered Accountant's certificate. Further, it is submitted that since the records are voluminous the petitioner offered to give the entire details in CD form and the break up details as duly certified by the Chartered Accountant and in spite of the same, the assessment

was completed. Therefore, it is submitted that to the extent of the above said two turnovers for the assessment years 2008-09 and 2007-08, the petitioner has canvassed the correctness of the same in those writ petitions. However, for the remaining turnover, the petitioner has preferred appeals before the second respondent as disputed questions of fact are involved and therefore, the petitioner thought fit to pursue the appeal remedy. The petitioner lodged the appeal by remitting 25% of the disputed tax on the disputed turnover of Rs.622,62,547/-. The appeal papers were returned as not maintainable for the reason that this Court though did not grant any stay of the demand of tax in respect of those two turnovers, the subject matter of the writ petitions in W.P.Nos.28818 and 28819 of 2014 but had directed the respondents not to take any coercive action against the petitioner and as the impugned order in the writ petitions has not been set aside by the court, the said order would not have any impact on the appeal provision.

4.The learned counsel appearing for the petitioner submitted that in terms of the provisions of the Acts and the Rules, the admitted liability of an assessee when he avails an appeal remedy would be the liability which he admits in the memorandum of appeal whatever his stand might be before the Assessing Officer. In support of his stand, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Kanpur Vanaspati Stores, Kanpur vs. Commissioner of Sales Tax, U.P., Lucknow reported in (1973) 32 STC 655 (SC). Therefore, on the above ground the learned counsel appearing for the petitioner submitted that the impugned audit memo may be set aside and the appeal may be directed to be taken on file.

5.The learned Additional Government Pleader submitted that the turnover which has been disputed by the petitioner in W.P.Nos.28818 and 28819 of 2014 has not been stayed by the Court and therefore the question of excluding the amount for computation of disputed turnover does not arise and the Appellate Authority was justified in holding that the appeal is not maintainable.

6.After hearing the learned counsel appearing for the parties elaborately and on perusing the materials placed on records, the only issue which falls for consideration is as to what would be the disputed turnover to be reckoned for the purpose of arriving 25% of the disputed tax to be deposited as pre-deposit for entertaining the appeal. Admittedly, the petitioner had availed two remedies. The first being filing a writ petition before this Court in W.P.Nos.28818 and 28819 of 2014, wherein the same orders of assessment was questioned with respect to the turnovers of Rs.1369317498/- and Rs.1340758140/-

which was assessed to tax at 12.5% and penalty being imposed under Section 27(3) of the Act. The question would be as to what would be the effect of challenge to that portion of the turnover in those two writ petitions and what would be its impact on the memorandum of appeal filed before the second respondent in respect of the other turnovers of the same assessment year.

7. When the writ petitions in W.P.Nos.28818 and 28819 of 2014 came up before this Court on 14.11.2014 elaborate submissions were heard and it appears that there were hearings at earlier occasions as well. After hearing Mr.N.Sriprakash, the learned counsel appearing for the petitioner and Mr.Manokaran Sundaram, the learned Additional Government Pleader appearing for the respondents in the writ petitions, this Court reserved orders. At that juncture, a request was made by the learned counsel appearing for the petitioner that till orders are passed in the writ petitions, the respondents may take action against the petitioner on the turnovers which they have disputed in the writ petitions on which tax and penalty has been levied and demanded. Therefore, this Court made an observation that the respondents shall not take any coercive action against the petitioner pursuant to the impugned proceedings. The impugned proceedings before this Court in those writ petitions was the turnover which the petitioner had disputed for the very same assessment years. Subsequently the case bundle was not traceable and from the record of the proceedings it is seen that only after the impugned order in these writ petitions came to be passed steps were taken to trace the bundles. Since the bundles were not traceable, the Registry placed a note before me as to the action to be taken and I directed the papers to be re-constructed. Therefore, the papers were re-constructed by obtaining copies from the Office of the Special Government Pleader (Taxes) and the cases were restored along with the interim protection. It was subsequently listed by other learned Judges and ultimately, I have heard those writ petitions as well today (01.08.2016) and reserved orders. Thus, this Court having been ceased off the challenge with regard to those two turnovers in W.P.Nos.28818 and 28819 of 2014, it undoubtedly means that turnovers have been disputed. The effect of the interim order which was granted in those writ petitions was to the effect, directing the respondents not to take any coercive action which shall mean that the respondents are restrained from giving effect to the impugned assessment orders which are the subject matter of challenge. Thus the only interpretation which can be given is that the turnovers to that extent stands suspended.

8. The issue which has been raised by the second respondent in the impugned order is that the petitioner has not remitted

25% of the tax admitted. In fact, an identical issue arose for consideration before the Hon'ble Supreme Court in the case of Kanpur Vanaspathi Stores (supra). The case was under the Uttar Pradesh State Sales Tax Act and the rules framed thereunder which are para materia with the TNGST Rules as well as the TNVAT Act. In the said case before the Assessing Officer, the assessee admitted its tax liability was Rs.10,339.19. Against the order of assessment, appeal was preferred before the Appellate Authority and after hearing the Assessing Officer's objection, was accepted and the appeal was dismissed as not maintainable. This was put to challenge by way of writ petitions before the High Court. The writ petitions were dismissed which was challenged before the Hon'ble Supreme Court. After taking note of Sections 3A, 3A(I) and 9(1) of Uttar Pradesh Sales Tax Act and Rule 41(2) of the Uttar Pradesh Sales Tax Rules, the Hon'ble Supreme Court pointed out as to what is the tax admitted on the following lines:

".....It we come to the conclusion that the expression "tax admitted-in the proviso to Section 9(1) means that admitted in the memorandum of appeal, section 9 can be made wholly useless. All that an assessee has to do is not to admit his liability in the memorandum of appeal, whatever his stand might have been before the assessing authority. Ordinarily no interpretation should be placed on a provision which would have the effect of making the provision either otiose or a dead letter. Further, to find out the true meaning of the expression "tax admitted" we must take into consideration the remaining words of the proviso, namely, "or such instalments thereof as may become payable---. Those words furnish a key to the interpretation. If one of the conditions for maintainability of the appeal is payment of the instalments which have become payable under rule 41 (2), it means that the admission that has got to be taken into consideration is that made before the assessing authority and not before the appellate authority."

9. Applying the above decision to the facts of these cases and in conjunction with the observation and finding recorded by this Court on the effect of the pendency of the earlier writ petitions and the effect of the interim order, the petitioner was fully justified in contending that he is entitled to pay 25% of the tax on the disputed turnover which has been calculated by them excluding the turnover which is the subject matter of challenge in the the earlier writ petitions filed by the petitioner.

10.In the light of the above interpretation, the observation made in the impugned audit calls for interference. Accordingly, the writ petition is allowed and the impugned audit is set aside and the petitioner is directed to re-present the appeal before the second respondent, who is directed to take the same on file and proceed in accordance with law as the petitioner has already effected appropriate pre-deposit. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cse

To

1. The Deputy Commissioner (CT)-II,
Large Taxpayers Unit,
'Dugar Towers', Fifth Floor,
34, Marshalls Road, Egmore,
Chennai - 600 008.
2. The Joint Commissioner (CT) Appeals,
III Floor, CT Building Annexe,
Greens Road,
Chennai - 600 006.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.43508

W.P.Nos.10182 and 10183 of 2015
and

M.P.Nos.1 and 1 of 2015

CA(CO)
CA(29/08/2016)

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