IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W P No.40718 of 2016
&
WMP No.34714 of 2016

M/s.Lenova (India) Private Ltd.
rep. by its Manager-Indirect Taxation,
Ashish Chawra, No.426/3A-3D,
Killi Road, Manjambakkam,
Chennai 60. ... Petitioner

Vs

The Deputy Commercial (CT)-IV(FAC)
Large Tax Payers Unit
No.34, (Old No.123), 'Dugar Towers'
Rukmani Lakshmipathy Salai
Egmore, Chennai 600 008. ... Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent herein in TIN:33120702354/2015-16, dated 25.10.2016 and quash the same.

For Petitioner : Mr.N.Sri Prakash

For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.N.Sri Prakash, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. By consent, the writ petition itself is taken up for final disposal, at the admission stage. One more reason for disposing of the Writ Petition is on the ground that the impugned assessment is for part of the year and admittedly, as on date the year is over and therefore, this Court is inclined to dispose of the main Writ Petition itself.

2(i) The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value

Added Tax Act, 2006 [TNVAT Act] and Central Sales Tax Act, 1956 [CST Act] and they are engaged in the business of trading in Laptop, Desktop, Mobile phones and Servers and its parts. During the assessment year 2015-16, the petitioner has effected imports of Laptops, Desktops, etc. and sold the goods locally inside the State of Tamil Nadu upon payment of applicable tax under the TNVAT Act. Some of the goods are said to have been sold as Interstate sale by the petitioner from the State of Tamil Nadu upon payment of applicable tax under the CST Act. The petitioner states that they also undertook stock transfer of the goods so imported through their branch located outside the State of Tamil Nadu against the Declaration under Form-F, as per the amended Section 6A of the CST Act.

(ii) The petitioner would further state that apart from the above business dealings, they have effected local purchases of Anti-virus, Speaker, Mobile Phones, Laptop Cable lock, etc. inside the State of Tamil Nadu from dealers registered under the VAT Act upon payment of applicable VAT and they have also availed Input Tax Credit and utilised the same for discharging their output tax liability on the sale of such goods inside the State of Tamil Nadu. The petitioner's case is that they never undertook a stock transfer of goods so purchased inside the State of Tamil Nadu. As a result, there was no occasion for the petitioner to reverse the Input Tax Credit under section 19(4) of the VAT Act.

(iii) Whilso, a VAT Audit was carried out by the officers Enforcement Wing on 12.1.2016, during which the petitioner was informed that on the stock transfers effected by them, the petitioner had to reverse the Input Tax Credit under section 19 (4) of the VAT Act. Apart from that, certain other defects were also pointed out by the Enforcement Wing Officers.

(iv) Consequent to the audit conducted on 2.01.2016, the petitioner was called upon to furnish various details relating to their business transactions, which according to the petitioner has been fully furnished. It appears that certain transactions done by the petitioner was pointed out and in respect of one such transaction, the petitioner paid a sum of Rs.3,43,47,133/- relating to excess Input Tax Credit availed along with interest of Rs.10,21,828/-. It is thereafter, the petitioner was served with a notice dated 31.03.2016. In response to the same, the petitioner submitted a reply through E-Mail on 07.04.2016, explaining the basis for their bona fide error committed by them, while availing excess ITC. Thereafter, the petitioner submitted letters dated 3.6.2016 & 21.06.2016, to the Officers of the Enforcement Wing, which was followed by a statement given by the authorised signatory of the petitioner on 22.6.2016. Ultimately, a show cause notice dated 20.7.2016, was served on the petitioner proposing to reverse the ITC availed by the petitioner under various heads. The petitioner submitted their objections on 16.8.2016, the respondent has rejected the objections and confirmed the proposal in the show cause notice. The said order of assessment is impugned in this Writ Petition.

3.The first ground raised by the learned counsel for the petitioner is that the impugned proceedings is for part of the assessment year 2015-16 i.e. upto December 2015 and the year having ended on 31.03.2016, the impugned order is liable to be set aside on the said ground. In support of his contention, the learned counsel placed reliance on the decision of this Court in W.P.No.16857 of 2015 dated 06.06.2016 [Next Education India Pvt. Ltd. rep.by its Director V. The Commercial Tax Officer, Tiruverkadu Assessment Circle], wherein this Court allowed the Writ Petition on the said ground, following the decision of the Hon'ble Division Bench in M/s Jothi Melters (India) Pvt.Ltd., V. The Commercial Tax Officer, Sathiyamangalam [W.A.Nos.1412 and 1413 of 2009 dated 14.10.2009].

4.The learned counsel further submitted that the petitioner's turnover exceeds Rupees one crore and therefore in terms of section 63A of the TNVAT Act, they have to file an Audit Report, the time is granted till 31st December of the year and the learned counsel referred to an order passed in W.P.No.1663 of 2015 dated 28.01.2015 [ALD Automotive Private Limited, rep. by its Executive, Taxation Vs. The Assessment Commissioner (CT), Vadapalani Assessment Circle].

5.I have heard Mr.K.Venkatesh, learned Government Advocate on the above submissions.

6.On a perusal of the notice dated 20.07.2016, as well as the impugned order dated 25.10.2016, it is evident that the assessment was upto December 2015 for the assessment year 2015-16. The said year was admittedly over as on 31.03.2016. The Hon'ble Division Bench of this Court in the case of M/s Jothi Melters (India) Pvt.Ltd.,(supra) has considered an identical question, wherein the Court took into consideration the decision of the Hon'ble Bench in State of Tamil Nadu V. Wander Limited [(1990) 79 S.T.C. 421(Mad)] and set aside the provisional assessment order, leaving it opento the Assessing Officer to pass final assessment order after hearing the appellant/assessee. The operative portion of the Judgement reads as follows:

> "3. The submission of the appellant before the learned single Judge was that both these assessment years were over and what the respondent had done was to pass a provisional assessment order. It was

submitted that when the assessment year was already over, the final assessment order was expected to be passed and not a provisional assessment order. The said submission was turned down by the learned single Judge by accepting the plea of the respondent that the appellant could go in appeal to the Appellate Assistant Commissioner of Commercial Taxes against the orders which were sought to be impugned before the learned single Judge.

4. Mr. R.L. Ramani, learned senior counsel appearing for the appellant has drawn our attention to the judgment of a Division Bench of this Court in State of Tamil Nadu vs. Wander Limited reported in (1990) 79 S.T.C. 421 (Mad.), which in turn, in paragraph 9 refers to another Division Bench judgment in Mahendrakumar Ishwarlal and Company vs. Deputy Commercial Tax Officer reported in (1971) 28 S.T.C. 551 (Mad.) to the effect that it is not open to the Revenue to pass a provisional order of assesment after the end of the assessment year.

5. In view of this clear enunciation of the legal position, the learned Special Government Pleader (Taxes) leaves it to the Court to pass appropriate orders.

6. Having noted the submissions of the learned senior counsel appearing on behalf of the appellant which are based on the two Division Bench judgments and wherein the proposition of law is also very clear, we allow both these appeals by quashing and setting aside the order passed by the learned single Judge in the two writ petitions as well as the provisional order of assessment dated 15.6.2009. It will be open to the Assessing Officer to pass the final assessment order after hearing the appellant-assessee. The learned senior counsel appearing for the appellant assures that the appellant will extend its full co-operation to the Assessing Officer in the matter of assessment. There shall be no order as to costs. Consequently, M.P. Nos.1 and 1 of 2009 in the respective writ appeals are closed."

The above referred decision was followed by this Court in the case of Next Education India Pvt. Ltd. (supra).

7.In the light of the above referred decisions, it has to be held that the impugned proceedings, which is a provisional assessment order for part of the assessment year, has to be set aside, leaving it open to the Assessing Officer to pass an assessment order for the entire year. At this juncture, it has to be pointed out that since the petitioner's turnover is more than Rupees one crore, Section 63A of the TNVAT Act would stand attracted. In terms of the provision under sub-section (1) of Section 63A, every registered dealer whose total turnover including zero-rate sale and sale in the course of inter-state trade or commerce as specified in section 3 of the Central Sales Tax Act, 1956, in a year, exceeds one crore rupees, shall get his accounts in respect of that year, audited by an Accountant and submit a report of such audit in the prescribed Form, duly signed and verified by the Accountant, to the Assessing authority, within such period as may be fixed.

8.Thus, the petitioner being a registered dealer whose turnover has exceeded Rupees One Crore, it is mandatory that they have to file the audited statement of their accounts by an Accountant, and such report should be in a prescribed Form, duly signed and verified by the Accountant to the Assessing Officer, within the period as prescribed. Rule 16-A of the Tamil Nadu Value Added Tax Rules, 2007 [TNVAT Rules] prescribes the procedure for filing Audit Report and sub-rule (1) of Rule 16-A of the TNVAT Rules states that every registered dealer liable to get his accounts audited as per sub-section (1) of section 63-A, shall furnish the audit report in Form-WW, within nine months from the end of the year in duplicate.

9.Thus, the petitioner's turnover having exceeded Rupees One Crore, they are required to file the Audit Report and they have got time to file the Audit Report i.e. within nine months from the end of the financial year and the end of the financial year was 31.03.2016. Therefore, the respondent/assessing officer has to necessarily await the Audit Report, as the statute provides a time limit for the petitioner to submit the same.

10.In the light of the same, the impugned order is set aside and the respondent is entitled to pass final assessment order after the petitioner files the Audit Report in terms of Section 63-A of the TNVAT Act, within the time prescribed under Rule 16 (1) of the TNVAT Rules and in the event the respondent for any valid reason does not accept the report, then the respondent is directed to issue show cause notice to the petitioner and proceed in accordance with law.

The Writ Petition is allowed on the above terms. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

rpa

To

The Deputy Commercial (CT)-IV(FAC)
Large Tax Payers Unit
No.34, (Old No.123), 'Dugar Towers'
Rukmani Lakshmipathy Salai
Egmore, Chennai 600 008.

+1cc to the Special Government Pleader(T), S.R.No.67911

W.P.No.40718 of 2016

KGK(CO)
CA(29/12/2016)