HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.7654 OF 2016

ORDER : (Per Hon'ble Sri Justice Ramesh Ranganathan)

The assessment order passed by the 1st respondent on 27.07.2015, under the A.P. VAT Act, 2005 ("the Act" for short), for the tax period 2011-2012 to 2012-2013, is subjected to challenge in this Writ Petition as illegal, arbitrary, without jurisdiction, in violation of principles of natural justice, and as contrary to Articles 14 and 19 of the Constitution of India. A consequential direction is sought to the respondents to refund Rs.6,24,702/-, which was claimed by the petitioner as excess input tax credit, with interest.

The facts, as stated in the affidavit filed in support of the Writ Petition, are that the petitioner is a registered dealer on the rolls of the 1st respondent carrying on business in oil and oil seeds. They claim to have purchased these goods from local VAT dealers, and to have sold them partly in inter-state trade and commerce, and partly as export sales; and that they had claimed refund of excess tax credit for Rs.29,38,176/- in the March, 2013 returns. On being so authorised, the 1st respondent conducted an audit, and verified the books of accounts of the petitioner for the tax period 2010-11 and 2011-12. Thereafter a show cause notice dated 16.07.2015 was issued proposing to disallow the petitioner's claim of input tax credit, for Rs.6,24,701/-, on the ground that the selling dealers, i.e., the dealers from whom the petitioner had purchased the subject goods, had not effected sales of edible oil, valued at Rs.1,24,94,015/-., to the petitioner herein.

The 1st respondent issued a show cause notice in Form - VAT 305A on 16.07.2015 asking the petitioner to file their written objections against the proposed assessment. In the said show cause notice, the 1st respondent stated that the correctness and completeness of returns filed by the petitioner were verified with reference to the books of accounts, purchase and sales bills, and the trading and P&L accounts for the period from 2011-12 to 2013-14; no variations were found in respect of output tax declared by the dealer; to ascertain the genuineness of the input tax credit claimed by them, he had cross checked with the references in Form 311 issued by the jurisdictional Commercial Tax Officers of the selling dealers; verification of the reports, received from the jurisdictional Commercial Tax Officer, revealed that the selling dealer (6th respondent) had not effected sales of edible oils of Rs.1,24,94,015/- to the petitioner; and hence the ITC claim of the petitioner for Rs.6,24,701/-, on the said transactions, was proposed to be disallowed.

Thereafter, the assessing authority passed an assessment order in VAT 305 dated 27.07.2015 wherein, after referring to the contents of the earlier show cause notice issued by him, he stated that the show cause notice was served on the petitioner-dealer calling for their written objections if any, against the proposed tax, within seven days from the date of receipt of the notice; the notice was served on the dealer on 16.07.2015; the dealer did not file any objection to the proposed tax within the stipulated time; it was hence presumed that they did not have any objections to offer; and the tax liability, proposed in the show cause notice, was being confirmed.

It is not in dispute that the petitioner failed to reply to the show cause notice. All that is stated, in justification thereof, is that there was some problem in the petitioner’s business and in their family. It is the petitioner’s case that he had approached the 1st respondent, and had requested for the copy of the report; the 1st respondent did not supply him a copy of the report of the 5th respondent; and, without granting sufficient time to produce the relevant documents, the 1st respondent had hurriedly passed the impugned assessment order.

The claim of the petitioner, to have the impugned assessment order set aside to the extent they were denied the benefit of input tax credit, is that they had taken the benefit of input tax credit on the basis of the tax invoice issued by Kalyani Traders, Nellore, (the sixth respondent) who is a registered dealer on the rolls of the 5th respondent; and they had also filed way bills and proof of transportation of the goods from the selling dealer to their premises. The petitioner did not prefer an appeal against the impugned assessment order. They, however, claim to have filed an application before the 5th respondent, under the Right to Information Act; and claim that no reply has been received, from the 5th respondent, till date.

Sri P. Balaji Verma, Learned Counsel for the petitioner, would place reliance on the judgment of this Court, in **M/s. Harsh Jewellers v. Commercial Tax Officer**[1], to submit that, as the petitioner has produced a tax invoice, failure on the part of the selling VAT dealer to declare the goods sold to the petitioner as part of their turnover, would not disable the petitioner from claiming input tax credit.

In **The State of Andhra Pradesh v. Thungabhadra Industries Ltd.**[2] a Division Bench of this Court observed that the twin tests to be applied, to determine whether the assessee is entitled to exemption of turnover from tax, were (1) the first seller should be a real and identifiable dealer within the State and (2) mere non-payment of tax by the first seller within the State does not shift the liability to pay tax on the second seller; in disposing of the matter, the Tribunal had rightly applied the said tests and, on the facts and circumstances of the case after verifying the records, had granted relief in respect of the purchases made by the assessee from real and identifiable sellers within the State whose registration number was mentioned in the bills; in respect of some other dealers whose registration numbers were mentioned, the Deputy Commissioner had disallowed the exemption for want of sufficient record; on verification by the Tribunal they were found to be real and identifiable dealers and, therefore, the Tribunal had granted exemption; in respect of some others, even the Tribunal came to the conclusion that, although certain registration numbers of the dealers were mentioned in the bills, they were not real and identifiable dealers within the State and, on that basis, he had disallowed the exemption claimed by the assessee; in so far as the assessee's claim was allowed by the Tribunal, the department had filed T.R.C, and in so far as the assessee's claim was disallowed the assessee had filed T.R.C; and both the T.R.C, must be dismissed.

In **B. Narasaiah & Co. v. State of A.P. (AP)**[3] a Division Bench of this Court held:-

"….. This Court in **State of A.P. v. Thungabhadra Industries Ltd**. dealing with a claim of registered dealer, who claimed as a second seller of groundnut oil, taxable at the first point of sale within the State of Andhra Pradesh, under the provisions of the Act, laid down two principles to allow the exemption. **They are (1) that the first seller should be a real and identifiable dealer within the State ; and (2) that mere non-payment of tax by the first seller within the State does not shift the liability to pay tax on the second seller**. In the light of these principles laid down by this Court, with which we are in respectable agreement, when we look at the facts of this case, it cannot be said that the petitioner failed to establish that he made the purchase from a real and identifiable dealer within the State. There is no controversy that Bantu Chinnaiah & Co., Nizamabad, is a registered dealer under the provisions of the Act and its identity is also not in dispute. As rightly pointed out by the learned Special Government Pleader for Taxes, it is true that there is no satisfactory evidence placed before the Tribunal or before us to show that the vendor of the petitioner filed returns including the sale of turmeric in the turnover. However, the department assessed the tax on the gross turnover of Rs. 8,85,500 and determined the tax of Rs. 63,313.25 paise. **The reason that the vendor of the petitioner did not pay the assessed tax cannot be a valid ground to disallow the claim of the petitioner. We say this because under the statute, if the vendor is alone is liable to be taxed and if he fails to discharge the said liability, it is always open for the authorities under the Act to proceed against him and recover the same by the mode known to law. But that circumstance can never be a valid and tenable ground to disallow the exemption claimed by the petitioner.** …."

(emphasis supplied)

In **Harsh Jewellers**[1], a Division Bench of this Court, relying on **Thungabhadra Industries Ltd.**[2]; and **Sri Ramanjaneya Groundnut**

Factory v. CTO, Kadiri[4], held that the principles laid down therein were afortiori applicable since Section 13(1) of the Act entitled the VAT dealer to claim input-tax credit for the tax charged in respect of all purchases of taxable goods made by that dealer during the tax period; failure on the part of M/s. Karat 24 (selling dealer) to file returns, or remit the tax component of the sales made to the petitioner, could not per se be a ground to deny input-tax credit; the impugned order of assessment did not assert that the invoices produced by the petitioner were fraudulent or had not been issued by M/s. Karat 24 or that the purchaser did not, in fact, obtain the invoices from the registered dealer; and it was also not disputed, and in fact was conceded in the order of assessment, that the registration of M/s. Karat 24 was cancelled on February 28, 2010, i.e., after the transaction in question occurred whereunder the petitioner had purchased bullion from the registered dealer, and had produced the vouchers.

Section 13 of the Act relates to credit for input-tax and under sub-section (1) thereof, subject to the conditions if any prescribed, an input tax credit shall be allowed to the VAT dealer for the tax charged in respect of all purchases of taxable goods, made by that dealer during the tax period, if such goods are used in the business of the VAT dealer. Section 13(3) enables a VAT dealer to claim (a) input tax credit, under sub-section (1), on the date the goods were received by him provided he was in possession of the tax invoice. Section 14 relates to tax invoices and, thereunder, a VAT dealer, making a sale liable to tax to another VAT dealer, shall issue, at the time of sale, the tax invoice in such form as may be prescribed. Section 2(35) of the Act defines “tax invoice” to mean a sales invoice containing such details as may be prescribed, and issued by a VAT dealer to another VAT dealer. Section 2(43) defines “VAT dealer” to mean a dealer who is registered for VAT.

Rule 26 of the A.P. VAT Rules, 2005 ("the Rules" for short) relates to invoices and, under sub-rule (1) thereof, the invoices, bills or cash memoranda issued by a dealer shall be serially numbered for each year; and, in the case of the dealer, each of such invoice issued shall contain the particulars referred to in the said Rule. Among the particulars which a tax invoice is required to contain are (d) the date on which the invoice is issued; (e) the description of the goods supplied (f) the quantity or volume of the goods sold; (g) the basic price of the goods, the rate of tax, the amount of tax, and the total sale price which is the sum of the basic price and tax amount. Rule 27 relates to tax invoice and, under sub-rule (1) thereof, a tax invoice, specified in Section 14, is required to contain the details specified in the said Rule. Among the details referred in Rule 27(1) are (d) the serial number of the invoice and the date on which the invoice is issued; (e) the date of delivery of the goods; (f) the description of the goods supplied; (g) the quantity or volume of the goods sold; (h) the rate of tax for each category of goods; (i) the basic price of the goods sold, the rate of tax, the amount of tax and the total sale price which is the sum of the basic price and the tax amount. Rule 27(4) stipulates that input tax credit shall be claimed only against an original tax invoice. Section 55 of the AP VAT Act relates to penalty for issue of a tax invoice, and for the use of false tax invoices. Under Section 55(2) any VAT dealer, who issues a false tax invoice, or receives and uses a tax invoice knowing it to be false, shall be liable to pay a penalty of 200% of the tax shown on the false invoice.

The entitlement of a VAT dealer to claim input tax under Section 13(1) of the Act, in view of Section 13(3) thereof, is only if he is in possession of a "tax invoice". A valid "tax invoice", in view of Section 2(35) of the Act, (1) must contain the details prescribed by the Rules; and (2) should have been issued by a VAT dealer to another VAT dealer. In view of the requirement of Section 14 of the Act, it is only in cases where there is a sale of goods, liable to tax under the Act, by one VAT dealer to another is the former required to issue a "tax invoice" to the latter. Among the details, required to be furnished in the "tax invoice" in terms of Rule 27(1), are the description of the goods supplied and the quantity or volume of the goods sold. The mere fact that the dealer is in possession of the tax invoice does not preclude the assessing authority from ascertaining whether the selling dealer had, in fact, sold the goods to the purchasing dealer; whether there was physical delivery of such goods; whether the "tax invoice" was issued by a registered VAT dealer; whether or not the transactions of sale were genuine, etc. If, on enquiry, the assessing authority is satisfied, on the basis of the material evidence on record, that there has been no sale of goods, or the tax invoice was not issued by the VAT dealer, or that there was no physical delivery of goods, or that inter-state purchases had been suppressed and bogus tax invoices were raised as if the said goods had been purchased by the dealer within the State, he can deny the assessee the benefit of input tax credit.

The benefit of input tax credit is given to avoid the cascading effect of levy of sales tax at multiple points of sale. A dealer, carrying on business in the purchase and sale of goods, is entitled to claim deduction of the tax paid by him, (while purchasing goods from a VAT dealer within the State), from the tax which he collects from the dealer to whom he has sold the goods; and to pay only the differential tax (the difference between output tax and the input tax). (**M/s. Vijaya Venkata Durga Oil Traders v. The Commercial Tax Officer, Sivalayam Street, Circle, Vijayawada I Division, Gunadala, Vijayawada, Krishna District**[5]).

While the purchasing VAT dealer would not be entitled to claim input tax credit without obtaining a tax invoice from the selling VAT dealer, mere production of a tax invoice would not disable the assessing authority from enquiring whether the sale of goods, referred to in the said tax invoice, is genuine or whether the said tax invoice has been issued by a registered VAT dealer. While the 6th respondent is said to be a registered dealer, and the petitioner claims to have purchased the goods from him and to have obtained tax invoices in this regard, the information, on which the assessing authority placed reliance upon, shows that the selling VAT dealer had not declared the turnover, relating to the sale of goods to the petitioner, in their returns.

Section 16 of the Act relates to burden of proof and, under sub-section (1) thereof, the burden of proving that any sale or purchase effected by a dealer is eligible for input tax credit shall lie on the dealer. It is for the petitioner, in reply to the show cause notice issued by the assessing authority, to prove that the goods were physical delivered to him by the 6th respondent, and the mode and manner in which they paid the sale price to the 6th respondent; and to satisfy the assessing authority that, notwithstanding failure of the selling VAT dealer to disclose the turnover (representing the sale of goods by them to the petitioner) in their returns, the goods had, in fact, been sold to them.

It is not even contended before us by Sri P. Balaji Verma, Learned Counsel for the petitioner, that the petitioner did not receive a copy of the show cause notice. It is also not in dispute that the petitioner did not even choose to reply to the show cause notice, let alone establish the genuineness of the transactions. While non-payment of tax, by a registered VAT dealer, on the sale of goods by him to the purchasing VAT dealer, may not disentitle the purchasing VAT dealer from claiming input-tax credit, the assessing authority, in the present case, has, on the basis of the material on record, opined that the selling VAT dealer has not even disclosed the said turnover in their returns. The petitioner could have discharged the onus placed on them, under Section 16 of the A.P. VAT Act, by adducing evidence before the assessing authority to show that, notwithstanding the failure of the selling VAT dealer to disclose the turnover in their returns, the said transaction is a genuine sale transaction, evidenced by physical delivery of the goods; and that payment was made by the petitioner to the 6th respondent for the goods purchased by them. The petitioner has not even chosen to submit their reply to the show cause notice, much less adduce any oral or documentary evidence in this regard.

In the exercise of its jurisdiction, under Article 226 of the Constitution of India, this Court would not sit in appeal over the findings of fact recorded by the assessing authority, or cause a roving enquiry as to whether or not the selling VAT dealer had deliberately suppressed the turnover in their returns after effecting sales to the petitioner herein, or to examine whether or not the petitioner had taken delivery of the subject goods and had paid the sale consideration to the 6th respondent. This Court would also not substitute its views for that of the assessing authority. It is only if the impugned order suffers from an error of law apparent on the face of the record would this Court interfere. The impugned order does not suffer from any such infirmity.

We are satisfied that the impugned assessment order does not necessitate interference in proceedings under Article 226 of the Constitution of India. The Writ Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

(M. SATYANARAYANA MURTHY, J)

Date: 15 .03.2016

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[1] (2012) 54 APSTJ 133 (AP)

[2] (1986) 62 STC 71 (AP)

[3] (2002) 127 STC 606

[4] (1996) 103 STC 297

[5] (Order in W.P. No.15413 of 2014 dated 25.09.2014)