

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE T.RAJANI

+ Writ Petition No.27836 of 2017

% Date: 11-10-2017

M/s. Prathul Automobiles Pvt. Ltd.,
6-3-899/1, Raj Bhavan Road,
Somajiguda, Hyderabad,
Rep. by its Director, B.S. Neelakanta

... Petitioner

Vs.

\$ 1. The State of Telangana, Rep. by its Prl. Secretary,
Revenue (CT) Dept., Telangana Secretariat, Hyderabad

2. The Appellate Deputy Commissioner CT,
Punjagutta Division, O/o Commissioner of
Commercial Taxes, M.J. Road, Nampally, Hyderabad

3. The Asst. Commissioner (CT)-II,
Enforcement Wing, O/o Commissioner of
Commercial Taxes, M.J. Road, Nampally, Hyderabad

... Respondents

! Counsel for Petitioner: Ms. N.Niyatha

Counsel for Respondents 1 to 3: Mr. J.Anil Kumar,
Spl. Standing Counsel

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> Head Note:

? Cases referred:
Nil.

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
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Order: (per V.Ramasubramanian, J.)

The petitioner, who is a registered dealer under the Andhra Pradesh/Telangana Value Added Tax Act, 2005, has come up with the above writ petition challenging an order of the Appellate Deputy Commissioner dismissing their appeal as against the order of assessment.

2. Heard Ms. Y.Niyatha, learned counsel for the petitioner and Mr. J.Anil Kumar, learned Special Standing Counsel for the respondents.

3. The petitioner is engaged in the business of trading in Honda Two-wheelers and Spares. They received an intimation of audit visit on 14-7-2015, calling upon them to keep the records ready on 15-7-2015. On the ground that the time given to them was not adequate, the petitioner produced only those documents that could be collected.

4. Thereafter, a notice of assessment dated 31-8-2015 was issued, calling upon the petitioner to file their written objections along with documentary evidence. The petitioner filed their objections and sought personal hearing as well as further time. The representative of the petitioner appeared for personal hearing and made written submissions. They claimed in the written submissions that the Value Added Tax on the sale of second hand vehicles, to the tune of

Rs.18,85,76,528/- was not payable as per Rule 20(3-a) of the Rules and that they were eligible for notional input tax credit on the purchase value of second hand vehicles to the tune of Rs.14,92,02,325/-. According to the petitioner, they did not include the notional input tax credit on the purchase value of second hand vehicle to the tune of Rs.3,93,74,203/-, along with Rs.14,92,02,325/-, as the same was classified as output tax, instead of as notional input tax credit vide assessment order in Form VAT 305, dated 31-5-2016.

5. The Assessing Officer passed an order dated 31-5-2016, rejecting the claim of the petitioner for notional input tax credit on the ground that there was no documentary evidence.

6. Challenging the assessment order dated 31-5-2016, the petitioner filed a writ petition in W.P.No.20186 of 2016. It is relevant to note herein that the assessment order dated 31-5-2016 related to the period from April, 2012 to June, 2015.

7. The said writ petition W.P.No.20186 of 2016 was taken up along with two other writ petitions filed by a different assessee, but on the same question viz., the non-inclusion of notional input tax credit on the purchase value of second hand vehicles.

8. By a final order dated 19-7-2016, this Court set aside the order of assessment dated 31-5-2016 and directed the Assessing Authority to afford an opportunity of hearing to the

petitioner to produce documentary evidence to show – (i) the price actually paid on the purchase of used/second hand vehicles and (ii) that the vehicles purchased by them had suffered VAT at the time of initial registration under the Motor Vehicles Act, 1988 within the State of Telangana.

9. Pursuant to the said order, the Audit Officer granted notional input tax credit to the tune of Rs.14,92,02,325/-.

10. After the disposal of the writ petition, the petitioner filed a statutory appeal as against the other portions of the assessment order dated 31-5-2016. The appeal was filed on 03-8-2016, after the disposal of the writ petition on 19-7-2016.

11. The appeal was restricted only to an amount of Rs.9,27,35,825/-, as the petitioner got a relief to the tune of Rs.14,92,02,325/-, even before the Assessing Authority pursuant to the order passed by this Court in W.P.No.20186 of 2016.

12. Before the Appellate Authority, the petitioner challenged the denial of notional input tax credit in respect of the balance amount viz., Rs.3,93,74,203/- (Rs.18,85,76,528/- - Rs.14,92,02,325/-). But the Appellate Authority rejected the claim on the ground that the petitioner failed to furnish any sort of documentary evidence to prove that the used/second hand vehicles purchased by them had suffered VAT at the time of initial registration under the Motor Vehicles Act, 1988 within the State of Telangana. Aggrieved

by the said order of the Appellate Authority, the petitioner has come up with the above writ petition, bypassing the alternative remedy of appeal to the Telangana VAT Appellate Tribunal.

13. The contention of the learned counsel for the petitioner is that at the time of personal hearing before the Original Authority, documentary evidence had already been furnished to show the purchase of used/second hand vehicles and that the Appellate Authority, without looking into the same, rejected the claim. Therefore, the learned counsel claims that the petitioner is entitled to bypass the alternative remedy of appeal, as the First Appellate Authority omitted to consider the availability of records.

14. We have carefully considered the submissions of the learned counsel for the petitioner.

15. As we have stated earlier, the original order of assessment was dated 31-5-2016. By the said order, notional input tax credit on the purchase value to the tune of Rs.18,85,76,528/- was denied. For some strange reason, the petitioner first filed a writ petition in W.P.No.20186 of 2016, challenging the denial of notional input tax credit only to the tune of Rs.14,92,02,325/-. After succeeding in the writ petition partly, the petitioner went before the First Appellate Authority, in respect of the balance amount of Rs.3,93,74,203/-, for which notional input tax credit was denied.

16. The prayer made in the writ petition W.P.No.20186 of 2016 was as follows:

“Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, direction or order especially in the nature of a writ of mandamus declaring that the assessment order in A.O.26403 AC(CT) II Enft Case NO.41/2015-16 dated May 31, 2016 passed by the respondent to the extent of non-inclusion of notional input tax credit on purchase value of Rs.14,92,02,325/- of second hand vehicles, as being illegal, arbitrary, unlawful, contrary to Section 13 of the Telangana Value Added Tax Act, 2005 and Section 20(3-a) of the Telangana Value Added Tax Rules, 2005, and, consequently, set aside the same.”

17. The operative portion of the order passed by this Court on 19-7-2016 in W.P.No.20186 of 2016 is as follows:

“The assessment order, to the limited extent the petitioner was denied notional input tax credit on their purchase of used/second hand vehicles on the ground that they had failed to produce a tax invoice, is set aside. The assessing authority shall afford the petitioner an opportunity of a personal hearing, and to produce documentary evidence to show (1) the price actually paid by them on the purchase of used/second hand vehicle, and (2) that the vehicles purchased by them had suffered VAT at the time of their initial registration, under the Motor Vehicles Act, 1988, within the State of Telangana. The assessing authority shall, thereafter, pass orders afresh in accordance with law at the earliest, and in any event not later than 4 (four) months from the date of receipt of a copy of this order. It is made clear that the assessment order shall remain valid in all other aspects, and the petitioner is at liberty to avail the alternative remedy of an appeal to challenge the assessment order on all other questions of fact and law.”

18. As could be seen from the last line of the operative portion of the order extracted above, this Court gave liberty to the petitioner to avail the alternative remedy of appeal on questions that were not adjudicated before the Court. It is only in pursuance of the liberty so granted that the petitioner filed a statutory appeal on 03-8-2016 before the First Appellate Authority. One of the issues raised before the First Appellate Authority was the denial of notional input tax credit to the tune of Rs.3,93,74,203/-. This claim is now rejected by the First Appellate Authority, on the ground that no proof was submitted.

19. The contention of the learned counsel for the petitioner is that proof was already produced. If proof had already been produced, the petitioner could have included this portion of the claim for notional input tax credit, also in the first writ petition. After having failed to make this claim as part of the first writ petition, it is not open to the petitioner to come up with a second writ petition in respect of this claim, taking advantage of the fact that the First Appellate Authority has now rejected the said claim.

20. The finding of the First Appellate Authority that there was no evidence in relation to this portion of the claim, is a finding of fact. This finding has to be agitated only before the Second Appellate Authority and not before this Court in a writ petition.

21. The present writ petition does not satisfy the parameters for bypassing the alternative remedy of appeal. Therefore, this writ petition is liable to be dismissed.

22. The impugned order was dated 07-4-2017. The petitioner had a time limit of 60 days from the date of receipt of the impugned order to file a statutory appeal before the Tribunal. The Tribunal has power to condone the delay up to a period of 60 days.

23. The petitioner filed the above writ petition on 17-8-2017. We do not know when the petitioner received the copy of the impugned order. Therefore, as and when the petitioner files an appeal before the VAT Tribunal, the Tribunal may exclude the period from 17-8-2017 up to the date of receipt of a copy of this order, for calculating the condonable period of 60 days.

24. With the above observation, the writ petition is dismissed. The office is directed to return the original impugned order to the petitioner to enable the petitioner to file a statutory appeal. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

T.RAJANI, J.

11th October, 2017.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT. JUSTICE T.RAJANI

Writ Petition No.27836 of 2017
(per VRS, J.)



11th October, 2017.
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