HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SMT. JUSTICE T. RAJANI

WRIT PETITION No.21742 OF 2017

ORDER: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This Writ Petition is filed questioning the order of the revisional authority dated 12.04.2017. On perusing the profit and loss account of the petitioner, the revisional authority noticed that the petitioner-dealer was in receipt of a discount of Rs.59,95,009/- during the year 2012-2013. He, thereafter, issued a show cause notice calling for the petitioner's objections to the proposed revision of the assessment order, and to levy a tax of Rs.2,99,750/- representing the disallowance of 5% of the input-tax credit claimed by the petitioner. The Deputy Commissioner (the revisional authority) relied on Rule 28(3)(b) in holding that the petitioner had received trade discounts and had submitted a copy of the Trade Discount record issued by his purchasers; after verification of the credit notes furnished by the dealer the following omissions were noticed; (i) there was no brief explanation of the circumstances which lead to issue of the credit note; (ii) there was no sufficient information to identify the taxable sale to which the credit note relates; and, on the ground that there was no valid reason to issue credit notes and sufficient information to identify the taxable sale to which the credit notes related, the revisional authority held that the credit notes were not in accordance with Rules 16(2) and (3) and 28 of the A.P. VAT Rules, and the petitioner-dealer was not eligible for the discount amount reflected in the credit notes, towards the sale price.

Sri P. Balaji Varma, Learned Counsel for the petitioner, would contend that it is only if credit notes had impacted the purchases, could the amount, representing credit notes, be deducted from the value of purchases to deny the petitioner their input-tax credit eligibility; there is no finding by the revisional authority that the credit notes had impacted the purchase value of the goods; and, in such circumstances, the impugned order passed by the revisional authority must be set aside.

Section 16 of the A.P. VAT Act places the onus on the assessee to establish that he is not liable to pay tax under the Act. Section 16(1) of the A.P. VAT Act stipulates that the burden of proving that any sale or purchase effected by a dealer is not liable to any tax, or is liable to be taxed at a reduced rate or is eligible for input tax credit, shall lie on the dealer. It was for the petitioner, therefore, to urge and establish that the credit notes, reflected in the profit and loss account, did not impact their purchases. No such contention has even been urged before the revisional authority. In any event these questions can also be agitated in an appeal, preferred against the order of the revisional authority, to the Sales Tax Appellate Tribunal. We see no reason, therefore, to interfere with the impugned revisional order.

Suffice it to make it clear that, in case the petitioner invokes the jurisdiction of the A.P. VAT Appellate Tribunal, the petitioner's contention shall be considered on its merits uninfluenced by the observations made in this order.

Subject to the above observations, the Writ Petition fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

T. RAJANI, J

Date: 05.07.2017.
MRKR