IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.4986 of 2018
&
W.M.P.Nos.6145 and 6146 of 2018

M/s.Elite Furniture Mart
Rep. by its Proprietor K.J.Antony
No.39, Variety Hall Road
Coimbatore - 641 001
Coimbatore District ... Petitioner

Vs.

The Assistant Commissioner (ST)
Nawab Hakkim Road Circle
Coimbatore-641 018
Coimbatore District ...Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the Respondent in its impugned proceedings made in TIN 33541900073/2015-16 dated 15.02.2008, quash the same as illegal and contrary to the scheme of the Act.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mr.M.Hariharan
Additional Govt. Pleader

O R D E R

Heard Mr.S.Rajasekar, learned counsel appearing for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing for the respondent.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value

Added Tax Act, 2006, is engaged in the business of furniture and allied products. In this writ petition, the petitioner has impugned the Assessment Order passed under the provisions of the Tamil Nadu Value Added Tax Act for the Assessment year 2015-16. The respondent issued notice dated 21.12.2017 referring to an earlier notice dated 16.02.2017 and the replies given by the petitioner dated 20.03.2017, 05.04.2017 and 11.04.2017. Two defects were pointed out in the notice dated 21.12.2017, namely

1) There is a mismatch noticed in the Department Web portal; and

2) Stock variation was noticed at the time of inspection.

3. The respondent alleged that the purchase details of the petitioner and their claim for Input Tax Credit when verified with reference to the sellers sales details as in the annextures I and II, as shown in the Departmental website, there were mismatch of entries noted and consequently proposed to reverse the Input Tax Credit availed by the petitioner to the tune of Rs.8,46, 598/-. The petitioner filed their reply dated 10.01.2018. While denying the said allegation, the petitioner pointed out that they have duly furnished all particulars in their monthly returns along with relevant Annexures I and II, which shows sales as well as purchases effected during the relevant month. Further, they pointed out that the annexures were duly filled in on the basis of the particulars as found in the Tax Invoice containing the name of the dealer, their respective TIN numbers, the sale and purchase price, the input and output tax payable and the corresponding Input Tax Credit claimed. The petitioner further submitted that the payments were made to the sellers through banks and debited in their bank account and the purchases are genuine and claim of Input Tax Credit is also legal. The petitioner, to support their stand that Input Tax Credit cannot be reversed for the reasons assigned, relied on certain judgments of this Court in the case of Althaf Sales (P) Ltd., Vs. Assistant Commissioner [(2012) 50 VST 179 (Mad)] and other decisions of this Court. Further, the petitioner stressed that for the alleged lapses on the part of the selling dealer in not declaring in their monthly returns the sales made to the petitioner, cannot be a ground to deny the Input Tax Credit on the petitioner's / purchasing dealer. Further, the petitioner relied on the decision of this Court in the case of JKM Fabrics and Others in W.P.No.105 of 2016 etc., batch dated 01.03.2017, wherein the Court issued directions as to how and in what manner, the issue pertaining to mismatch should be dealt with.

4. So far as the stock variation is concerned, the petitioner referred to the inspection done by the Sales Tax

Department on 23.09.2015 to 28.09.2015 and pointed out that because of the huge quantity of items, it is impossible to take stock correctly and accurately in one day. Further it is stated that the inspecting officials arrived at a stock value based on assumption that all their products are taxable at 14.5%. However, if the purchase details were verified, it will clearly indicate that those items were under exempted category, tax payable at 5% and tax payable at 14.5%. While stating that there could be variation in the stock value taken by the inspecting officers with the stock maintained by the computer inventory software, the method of taking the gross profit margin from the last year is incorrect with respect to the changes in the margin owing to the business environment.

5. The petitioner provided a reconciliation statement with regard to the physical stock both at the head office and the branch office by mentioning the relevant details in a tabulated format. Thus, the petitioner's case was that the exempted goods could not have been taxed at 14.5% and the report of the inspecting team is not sustainable. Further the petitioner also contested the equal time addition made, by referring to the decisions of this Court in the case of Nokia India Pvt. Ltd., Vs. Deputy Commissioner [79 VST 137] and other decisions as well. The respondent has afforded an opportunity of personal hearing to the petitioner, in which according to the learned counsel for the petitioner, all issues were sorted out and fully explained. However, while passing the Assessment order portion of the Input Tax Credit has been denied by the respondent and with regard to the stock variation, none of the points placed by the petitioner have been considered by the respondent and there is no finding with regard to the penalty, which has been imposed.

6. The respondent in their counter affidavit reiterated the stand taken in the impugned Assessment Order and submit that wherever reconciliation could be done, has been done and benefit has been granted to the dealer and when the TIN numbers of the selling dealer could not be verified as the petitioner has not produced details, the respondent has rightly denied the Input Tax Credit in respect of those transactions. Further, the petitioner, who has not objected the stock difference noticed at the time of inspection, cannot challenge the equal addition now made in the order as well as levy of penalty. Thus, the respondent, in effect, state that the petitioner have not objected to the stock difference before the inspecting team and therefore, they are estopped from now raising such a contention.

7. After elaborately hearing the learned counsel for the parties and carefully perusing the materials placed on record including the counter affidavit filed by the respondent, it has

to be seen as to whether the manner in which the impugned Assessment made is legally sustainable.

8. So far as the first issue is concerned, with regard to the reversal of Input Tax Credit on the alleged ground of mismatch as found from the Department web portal, though the respondent proposed to reverse the Input Tax Credit to the tune of Rs.8,46,598/-, it has accepted the documents filed by the petitioner and has dropped the proposal to the extent of Rs.8,01,171/- and denied credit for the balance amount of Rs.45,427/-. It has to be seen whether the reason assigned for denying Input Tax Credit for a sum of Rs.45,427/- is justified. The only reason given by the respondent for denying the Input Tax Credit on the said amount is that their selling dealers have not paid the tax collected from the petitioner into the Government Treasury. Thus, it is not on account of the default committed by the petitioner, but even as per the demand of the respondent, it is on account of the fact that petitioner's selling dealer has not remitted the tax collected into the Government Treasury. This cannot be a reason for reversing the Input Tax Credit, as held by this Court in Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani [60 VST 283]. Therefore, the said finding is unsustainable in law. The respondent is under a wrong impression that the decisions relied on by the petitioner will apply only to the parties to the litigation. This Court has taken such a view because while issuing the notice dated 21.12.2017, there is such an observation made by the respondent in the first paragraph of the notice. This is an incorrect way of reading a judgment. Ratio decidendi of a particular judgment or oder has to be taken note of and the respondent cannot state that it will be applicable only to the parties inter se in the said order. Thus, applying the decision in Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani, denial of Input Tax Credit to the tune of Rs..45,427/- is unsustainable in law and therefore, the same is to be set aside.

9. Moving on to the next issue, i.e., relating to stock variation, the respondent has failed to take note of any of the objections filed by the petitioner in their reply dated 10.01.2018. The respondent merely proceeded on the basis that the defects were admitted during the course of inspection. This finding is illegal and not sustainable. The respondent, being a statutory authority, is bound to consider the objections filed by the petitioner and the documents produced, examine the correctness of the same and then take a decision. The respondent has clearly abdicated his statutory power while concluding the assessment proceedings. These are sufficient reasons to set aside the finding with regard to the second issue.

10. The other issue which remains is, with regard to levy of penalty under Section 27(3) of the Act. The respondent should bear in mind the legal principle, which has been evolved in various decisions and as to when and under what circumstances, penalty would be attracted. The respondent should refer to the decision in the case of Nokia India Pvt. Ltd., Vs. Deputy Commissioner [79 VST 137]. However, this aspect of the matter has not been dealt with in the impugned Assessment Order.

11. Thus, in the absence of any specific reason recorded by the authority, attributing mens rea to the petitioner, the question of levy of penalty or making equal time addition does not arise. Even in the show-cause notice dated 21.12.2017, there were no reasons given as to why the respondent proposed equal time addition and proposed to levy penalty under Section 27 of the Act. Thus, the levy of penalty has to be eventually set aside.

In the result, the writ petition is allowed as hereunder:

1) The denial of Input Tax Credit to the tune of Rs.45, 427/- is set aside and the respondent is directed to extend the said benefit to the petitioner.

2) The finding with regard to stock variation and demand of tax is set aside and the same is remanded to the respondent for fresh consideration. The respondent is directed to afford an opportunity of personal hearing to the petitioner and consider the objections filed by the petitioner and the document that the dealer may produce and redo the assessment in the light of the reasons assigned in the preceding paragraphs. There is no case of making an equal time addition or levy penalty. Accordingly, the same is set aside.

No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gpa
To

The Assistant Commissioner (ST)
Nawab Hakkim Road Circle
Coimbatore-641 018
Coimbatore District.

+1cc to the Special Government Pleader Sr.36731
+1cc to M/S.R.Hemalatha, Advocate Sr.36375

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srg 20/06/2018