In the High Court of Judicature at Madras

Dated : 08.2.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.25681 to 25684 of 2017
& WMP.Nos.27100 to 27103 of 2017

Sanden Vikas India Private Limited,
rep.by Mrs.S.Bharathi, Authorized
Executive ...Petitioner

Vs

The Assistant Commissioner (CT),
Anna Salai Assessment Circle,
PAPJM Annexe, Greams Road,
Chennai-6. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records relating to the assessment order TIN : 33640641249/2007-08, TIN : 33640641249/2008-09, TIN : 33640641249/2009-10 and TIN : 33640641249/2010-11, all dated 21.8.2017 passed by the respondent and quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabhakar
For Respondent : Mr.M.Hariharan, AGP

COMMON ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956, is a joint venture company engaged in the manufacture of automotive air conditioning systems such as compressors of different variables, heating ventilation air conditioning units (HVAC units), cooling units, evaporators, condensers, etc. The petitioner supplies automotive air conditioning systems for passenger cars, multi utility vehicles, sports utility vehicles, commercial vehicles and heavy duty trucks. The petitioner is the major supplier for several automobile manufacturers such as M/s.Maruthi Suzuki, M/s.Hindustan Motors, M/s.TATA, M/s.Mahindra, M/s.Honda, M/s.FIAT, M/s.General Motors, M/s.Ford and M/s.Eicher.

3. In these writ petitions, the petitioner has challenged the assessment orders for the years 2007-08 to 2010-11.

4. The respondent issued the notices dated 31.7.2017 stating that earlier, notices dated 04.7.2017 were issued proposing to levy tax on the sale of compressor parts for automobile air conditioners at 12.5% and that the petitioner, by letters dated 12.7.2017, stated that they had already filed the industrial input certificates for the relevant years. When personal hearing was offered, they contended that the their product fell under Item (j) of Entry 67-A to the First Schedule under the State Act.

5. The respondent, after considering the said stand taken by the petitioner in the notices dated 31.7.2017, stated that the industrial inputs falling under Item (j) of Entry 67-A to the First Schedule under the said Act is only with regard to 'compressor of refrigerating equipment' and that the Entry does not indicate the industrial inputs for air conditioning for automobiles or for any other automobile related products. It appears that the respondent directed the petitioner to furnish sale invoices. Though the petitioner sought time to furnish the same, they were not furnished and therefore, the respondent proposed to assess the turnover at 12.5% under Section 27(1)(b) of the said Act and also levied interest under Section 42(3) of the said Act.

6. On receipt of the notices, the petitioner submitted their reply dated 10.8.2017 stating that they had already submitted their industrial input certificates firstly contending that that the revision of assessment for the relevant years ought to have been done on or before 30.6.2012 and beyond the said date, it is barred by limitation. With regard to the rate of tax, the petitioner contended that the goods falling under Part C of the First Schedule of the State Act excluding the plant and machinery only were eligible for the concessional rate and were included in Item 67 of Part B to the First Schedule with effect from 23.3.2007 and that the petitioner sold only parts and this was not mentioned in the Government Order in G.O.Ms.No.79 Commercial Taxes and Registration (B2) dated 23.3.2007 to be ineligible items.

7. The petitioner further contended that they are eligible to make sale of the goods as per the provisions laid under Rule 6(3)(b) of the Tamil Nadu Value Added Tax Rules, 2007, for which, they have to file the declaration and that such document was enclosed. Further, the petitioner requested to drop the proposal and also sought for an opportunity of personal hearing. However, on receipt of the said reply, the impugned orders have been passed.

8. On a reading of the impugned orders, it is seen that primarily for two reasons, the respondent has not accepted the petitioner's reply, firstly on the ground that the petitioner is not obligated to file industrial input certificate, as the goods are automobile goods taxable at 12.5%. In fact, the reasons assigned in the impugned assessment orders are not elaborate, but on a reading of them, it would show that the respondent was not inclined to accept the stand taken by the petitioner that the products dealt with by them are industrial inputs, but was of the opinion that they effected sale of automobile parts.

9. However, on a perusal of the counter affidavit filed by the respondent, it makes things clearer as to what passes on in the mind of the Assessing Officer while assessing the petitioner to tax at 12.5%. Though the settled legal position is that the respondent cannot supplement or add fresh reasons to what has been mentioned in the impugned assessment orders, this Court is inclined to take into consideration the averments set out in the counter to examine as to whether the rate of tax adopted by the respondent is just and proper and as to whether the respondent was justified in stating that the industrial input certificate produced by the petitioner has no value.

10. The respondent came to the conclusion that the goods are not exclusively used as industrial inputs or for the purpose of using as integral parts of refrigerating equipment or used along with the industrial inputs. To my mind, the only test as to whether it is an industrial input or not, is to refer to Rule 6 (3)(b) of the said Rules. The said Rule reads as under :

> "Every registered dealer, who is a manufacturer or producer and purchases industrial inputs to use them in manufacture of taxable goods shall issue a certificate to the seller containing the details of his tax payer identification number, the details of goods purchased, details of goods manufactured and the name and address and tax payer identification number of the seller."

11. In terms of the said Rule, every registered dealer, who is a manufacturer or producer and in the instant case, M/s.Ford is the purchaser, and purchases industrial inputs to use them in the manufacture of taxable goods, shall issue a certificate to the seller - the petitioner in the instant case containing the details of the tax payer identification number, the details of goods purchased, details of goods manufactured and the name and the address and the tax payer identification number of the seller/the petitioner herein.

12. A sample industrial input certificate has been filed at page 6 of the typed set of papers, from which, it is seen that the purchaser's tax payer identification number, the name of the petitioner and their tax payer identification number, the bill number and the date of invoice, etc., have been furnished in the form of annexure and the description of goods is also found in the annexure. The value of the goods has been given invoice-wise and also cumulatively and with regard to description of goods, it is stated as 'passenger cars, its parts, components and accessories'. The certificate further states that the goods specified in the statement are industrial inputs for use in or in connection with the manufacture of goods i.e. passenger cars, its parts, components and accessories, in the State, packing materials. 13. Though the petitioner has complied with Rule 6 of the said Rules, it has to be seen as to whether the respondent can ignore the same and take a stand that industrial input certificate produced is of no value. Considering the scheme of the said Act, the answer to this question should be in the negative i.e against the Revenue and in favour of the petitioner. Furthermore, Entry 67 of Part B to the First Schedule of the said Act states that the industrial inputs used in manufacture and for use in assembling, packing or labeling in connection with the manufacture inside the State are taxable at 4%.

14. Admittedly, the goods imported by the petitioner are inputs for the manufacture of car inside the State. Therefore, the appropriate classification should be under Entry 67 of Part B to the First Schedule and not otherwise. In paragraph 13 of the counter affidavit, the respondent took a stand that the industrial input certificates issued by the purchasing dealers do not contain the entire details as per Rule 6(3)(b) of the said Rules. However, this view is incorrect, as all the relevant details have been mentioned in the industrial input certificate. Even assuming that the certificate is incorrect, then, in terms of the decision of the Hon'ble First Bench of this Court in the case of Sree Murugan Engineering Products Vs. CTO, Coimbatore [reported in (2006) 148 STC 419], any contravention in the certificate can be attributed only to the person, who issued the certificate and not to the selling dealer.

15. In the light of the factual position, as culled out above, this Court has no hesitation to hold that the correct rate of tax to be adopted in respect of the transactions effected by the petitioner is 4%.

16. For all the above reasons, the writ petitions are allowed, the impugned orders are set aside and the matters are remanded to the respondent to redo the assessment by re-assessing the turnover at 4% and pass fresh orders in accordance

with law, after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, the connected WMPs are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

RS

To
The Assistant Commissioner (CT),
Anna Salai Assessment Circle,
PAPJM Annexe, Greams Road, Chennai-6.

+ 1 cc to Mr. Joseph Prabakar, Advocate Sr.9963

RSWP.Nos.25681 to 25684 of 2017&
WMP.Nos.27100 to 27103 of 2017

(CS-DR)
EU(28/02/2018)