IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2019

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P. No.37876 of 2015
and
WMP.No.1 of 2015

M/s.Mahindra & Mahindra Limited,
Rep. By Shri R.K.Sairam,
Manager CI & S Accounts - Admn.,
Mahindra Towers, 1st Floor,
No.17/18, Patullos Road,
Chennai - 600 002. ... Petitioner

Vs.

The Deputy Commissioner (C.T)-II, (FAC)
Large Tax Payers Unit,
5th Floor, Dugar Towers,
No.34, Marshall Road,
Chennai - 600 008. ... Respondent

Prayer : Writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the Assessment Order TIN/33510640011/2010-2011 dated 07.10.2015 passed by the respondent and quash the same.

For Petitioner : Mr.Joseph Prabakar

For Respondent : M/s.G.Dhanamadhri,
Government Advocate

ORDER

This writ petition was allowed partly on 16.12.2019 in the light of order dated 21.9.2017 and in the light of the order passed in W.P.No.20779 of 2007 by the Madurai Bench of this Court and in the light of the order of this Court in the petitioner's own case in W.P.Nos.1044 & 1214 of 2016 passed on 12.12.2019.

2. Since the order passed on 12.12.2019 in W.P.Nos.1044 & 1214 of 2016 has been recalled today, the order passed in the

present writ petitions on 16.12.2019 are also called.

3. The petitioner is aggrieved by the impugned order dated 07.10.2015 passed by the respondent for the assessment year 2010-11.

4. By the impugned order, the respondent has confirmed a differential tax of Rs.1,73,67,788/- payable by the petitioner. The demand that has been confirmed by the respondent falls under the following heads:-

I.	Sale value corresponding to CST purchase not reported :-	93,19,767.00
II.	UPS sold as Information Technology Products:	85,91,698.00
III.	Turnover reported under compounding option:	67,61,851.00
	Total	1,73,67,788.00

5. SALE VALUE CORRESPONDING TO CST PURCHASE NOT REPORTED:-

(i) It is the contention of the petitioner that as far as the vehicles which were purchased from the group company were meant for research and development and testing purpose testing at their Mahindra Research Valley.

(ii) It was submitted that the petitioner was not required to declare the purchase in Annexure 10 to Form-1 and therefore the demand that has been confirmed was unsustainable. It is submitted that these vehicles were not meant for being used as motor vehicles for use on roads and therefore no registration mark was necessary though the petitioner had paid entry tax at the time of their entry into the State.

(iiii) It is submitted that entry tax was paid by mistake. If proper enquiry was conducted the petitioner would have clarified the position.

(iv) It is further submitted that mere omission to show the inter-state purchases in Annexure-1 cannot result in an inference of sales suppression.

(v) It is further submitted that the very purpose of making declaration in Form 1 was to avail input tax credit.

(vi) It is submitted that no useful purpose would have been served as the petitioner was incapable of availing any input tax credit on the tax paid on interstate purchase.

(vii) It is further submitted that there was no sale of these vehicles which is brought for R & D purpose as such. The value of these vehicles meant for R & D purpose were capatilized in their books of account of the petitioner and were later sold on the written down value by the petitioner as and when sale were effected.

(viii) It is further submitted that the omission at best could be construed as technical and venial infraction of provisions and therefore can at best attract penalty under Section 71 of the Act and / or compounding fee and the Section 72(1)(b) of the act but certainly cannot attract tax at 12.5%.

6. UPS sold as Information Technology Products:

(i) As per as demand of differential tax on UPS sold as Information Technology Products is concerned it is submitted that the Home UPS manufactured and sold by the petitioner was indeed an Information Technology Product.

(ii) It is further submits that The Electronic Regional Test Laboratory, New Delhi by this report dated 11.02.2014 has certified that the Digital UPS manufactured and sold by the petitioner meets the criteria for a "Information Technology Product" which has to be considered by the respondent.

(iii) It is submitted that the issues covered by the decision of the Punjab and Haryana High Court in Goyal Motor Parts of the State of Punjab (2011) 38 VST 159. The further appeal to the Supreme Court by the State of Punjab was dismissed by the Supreme Court.

7. Turnover reported under compounding option:

(i) As far as is that Turnover reported under compounding option is concerned, it is submitted that the petitioner is entitled to pay tax at compounded rate of tax under section 6 of the TN VAT Act, 2006.

(ii) It is submitted that among the various divisions/units of the petitioner DG sets were handled by the petitioner's unit called POWEROI.

(iii) It is submitted that the petitioner provides annual maintenance contract of D.G sets and therefore opted to pay tax at the compounding rate at 4% in terms of section 6 of the Act.

(iv) It is submitted that petitioner has not made any purchase either local or interstate for use in the use of AMC and that the entire work was subcontracted to dealers who were registered under the Act and the petitioner therefore filed returns in Form L and paid tax at 4% under Section 6 of the Tamil Nadu VAT Act, 2006.

(v) It is submitted that the work was sub-contracted and all the components required for AMC were directly purchased by the contractors and therefore there is no question of paying tax.

8. Per contra on behalf of the petitioner it is submitted that the impugned order is well reasoned and require no interference.

9. It is further submitted that the petitioner has an alternate remedy before the Appellate Deputy Commissioner under the provisions of the Tamil Nadu Vat Act.

10. It is further submitted that the petitioner cannot introduce fresh evidence in the writ proceedings for the 1st time to make out a new case for getting the benefit of Information Technology Product on the home UPS by introducing a certificate of a Government Body.

11. I have considered the arguments advanced on behalf of the petitioner and the respondent. The case of the petitioner that the vehicles were meant for R & D purpose were capitalized in the books of account and not sold as such but where sold at a later point of time/scrapped would require a proper appreciation of fact.

12. I find submission of the learned counsel for the petitioner reasonable that as and when sales were affected, VAT would have been paid and that sale of such motor vehicles cannot be taxed once again on the purchase value plus addition applying

best judgment on the ground that there was failure to report the details in Annexure-1. Whether the petitioner within the paid tax is questions of fact which cannot be examined for the 1st time under the writ jurisdiction. This would require a proper reconciliation on facts and figures by the respondent assessing officer.

13. There is no point in asking the petitioner to prefer an appeal against the impugned order without proper facts and figure. The Appellate Commissioner will be handicapped to decide the appeal on merits and will be constrained to confirm the impugned order mechanically. Therefore, I am inclined to remit the case back to the respondent to pass a fresh order after considering the facts.

14. Therefore, petitioner's given one last opportunity to furnish evidence of sale of the motor vehicles either on written down value or as a scrap or re-transfer etc to the manufacturing unit of the petitioner located outside the State after R & D.

15. Similarly, the issue relating to classification of Home UPS based on the Punjab and Haryana High Court decision and the certificate of the testing laboratory would require reconsideration.

16. The expression "Information Technology Products" in Entry 68, Part B to the 1st Schedule to the Tamil Nadu VAT Act, 2006 is confined to those goods which have been notified by the Government as "Information Technology Products". The Government has issued G.O.Ms.No.3 CT & R(B1) dated 1.1.2007 for the aforesaid purpose with effect from the said date.

17. Serial number 27 to the said notification merely uses the expression "Uninterrupted Power Supply". However, there is no definition for the expression "Uninterrupted Power Supply".

18. The Home UPS may qualify as "Uninterrupted Power Supply". However, whether the Home UPS sold by the petitioner would qualify as "Uninterrupted Power Supply" for the purpose of the Entry 68, Part B to the 1st Schedule to the Tamil Nadu VAT Act, 2006 would require a proper appreciation of evidence. There are several methods for determination of the classification which may have to be applied before rejecting the claim of the petitioner.

19. The "Uninterrupted Power Supply" that is contemplated in use along with "Information Technology Products" appear to be those which are a composite unit consisting of the electronic/electrical item and the maintenance free battery. Automatic data processing machine/desktop computer system are

directly connected to such "Uninterrupted Power Supply" units. "Uninterrupted Power Supply" in turn is connected to be Power Point and the battery therein is charged. They are sold as standalone piece. In case of power cut, "Uninterrupted Power Supply" supplies the power and thereby stalling the switching off the desktop computer.

20. Whereas, the Home UPS sold by the petitioner which are also referred to as inverters are hooked directly to the mains and are intended to restore the supply power in case of power cut/disruption. It is used for lighting, running fan and operating smaller electrical and electronic gadgets. They require external battery and batteries are not sold by the manufacturer.

21. At the same time, they are capable of being used along with "Information Technology Products".

22. Therefore, the test would be whether the men of commerce in the trade and the consumer would consider the Home UPS sold by the petitioner as an "Uninterrupted Power Supply" so as to categorise it under "Information Technology Product" for the purpose of Entry 68, Part B to the 1st Schedule of the Tamil Nadu VAT Act, 2006.

23. This would require appreciation of evidence which I am of the view is best left to be the original authority so that clear and distilled facts are available for the appellate authority to decide in case one of the party decides to take the issue on further appeal.

24. Therefore, I am inclined to remit the case back to the respondent to pass appropriate orders on this aspect.

25. Similarly, the payment of tax at compounded rate under Section 6 would require reconsideration since the petitioner has not directly purchased the goods in the execution of the works contract for maintaining the DG sets. I am therefore of the view that the issue would require further re-examination by the respondent.

26. Therefore without expressing further opinion on this issue, the impugned order is set aside and the case is remitted back to the respondent to pass appropriate orders within the stipulated time.

27. Petitioner is given liberty to file additional representation of any within a period of 30 days from the date of receipt of copy of this order.

28. The respondent is requested to pass appropriate order within a period of three months from the date of receipt of copy of this order.

29. The Writ Petition stands disposed with the above observation. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

drl

To

1.The Deputy Commissioner (C.T)-II,
Large Tax Payers Unit,
5th Floor, Dugar Towers,
No.34, Marshall Road,
Chennai - 600 008.

+1cc to Mr.Joseph, Advocate, S.R.No. 106751
+1cc to the Special Government Pleader(Taxes), S.R.No. 106740

W.P.No.37876 of 2015
and
WMP.No.1 of 2015

VD(CO)
GN(05/08/2020)