IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2019

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.29097 of 2018
and
W.M.P.No.34025 of 2018

Kun Auto Private Limited
Represented by its Manager - Accounts
T.S.Sivaprasad
chennai 102 ...Petitioner

vs.

The Assistant Commissioner (ST)
Amaindakarai Assessment Circle
F.50, I Main Road,
2nd Floor, Anna Nagar East
Chennai-600 102. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in TIN/33471023474/2016-2017 dated 26.09.2018 and quashing the same.

For Petitioner : Mr.N.Prasad
For Respondent : Mr.Mohammed Shaffiq
Special Government Pleader

O R D E R

The present writ petition has been filed challenging the order of assessment dated 26.09.2018 relevant to assessment year 2016-2017.

2. The case of the petitioner, in short, is as follows:

The petitioner/Company is involved in the activities of dealership of Motor vehicles. Section 3(2) of the Tamil Nadu Value Added Tax Act, 2006 (for brevity "TNVAT Act") provides for levy of Value Added Tax (for brevity "VAT") and under that provision, VAT is leviable on the goods mentioned in the First Schedule to the enactment at the rate mentioned therein. Motor vehicles during the relevant period were taxable at the rate of 14.5% at the point of first sale in the State. The Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990, is a separate enactment and under Section 3 of the said Act, charge of entry tax is provided for the motor vehicles, which entered into the local areas of the State. Section 4 of the Entry Tax Act, provides for reduction in tax liability. Section 4 of the Entry Tax Act, is for the purpose to compensate the State from the loss of revenue of sales tax. During the course of VAT audit, a question was raised with regard to non-payment of entry tax on certain vehicles purchased by the petitioner/Company by way of interstate purchase against "C" declaration form contemplating the provisions of Section 8(4) of the Central Sales Tax Act, 1956. The petitioner/Company, during the course of VAT Audit, explained that whenever there were interstate purchase of vehicles made from manufacturers located outside the city, the petitioner/Company were diligently paying entry tax on the vehicles imported from outside the State viz., from other States and the petitioner/Company were claiming set-off in their VAT returns in accordance with the provisions of Section 4(2) of the Entry Tax Act, at the time of sale of the vehicles. There were hundreds of transactions in the course of the year and by oversight in a few cases, entry tax had not been paid. This pertained to interstate purchase of vehicles effected from M/s.Isuzu Motors India Private Limited from Isuzu Factory at No.3500, Sector 22, Central Express Way, Sri City, Varadaiahpalem Mandal, Chitoor District, Andhrapradesh. Even on these vehicles, though entry tax was not paid, VAT had been paid at the time of sales inside the State of Tamil Nadu by filing monthly returns under the provisions of the TNVAT Act. The sales, which were effected for the vehicles purchased from M/s.Isuzu Motors India Private Limited were the sales effected either immediately in the same month of purchase or within a short duration. The submission at the time of audit was that there was no loss of revenue, since one tax in this case viz., VAT was duly discharged. Until the year 2015-2016, purchases were made from M/s.Isuzu, from its assembling unit in Tamil Nadu on payment of TNVAT in 2016, since the assembling unit was moved to Andhra Pradesh, on a figure vehicles, entry tax was not paid by oversight. The Assessing Officer issued a notice of proposal dated 20.11.2017, and the petitioner filed their reply dated 11.12.2017 stating that in respect of 141 vehicles purchased from M/s.Isuzu Motors India Private Limited, the petitioner had not paid the entry tax, however, they had, in fact, paid the VAT. It is also contended by the petitioner that if the sales tax or

VAT had been paid, though entry tax had not been paid, the Assessee cannot, again, be mulcted with entry tax liability, since the scheme of the law is for payment of only one tax, either entry tax or VAT. The said reply was filed by the petitioner before another officer, while the impugned assessment order was passed by the present officer after several months, that too, without giving personal hearing.

3. A counter affidavit is filed by the respondents, wherein it is stated as follows:

A VAT audit was conducted in the business premises for the period from 2013-2014 to 2016-2017. On verification of the records produced by the petitioner, it was found that they have effected interstate purchase of vehicles from M/s.Isuzu Motors India Pvt. Ltd., Sri City, Andhra Pradesh against "C" Forms during the year 2016-2017 and thus, the petitioner/Company is liable to pay entry tax at the rate of 12.5%. The dealer may set off/adjust entry tax paid at 12.5% at the time of payment of VAT at 14.5% on the sale of vehicles. The petitioner/Company have straightaway filed the present writ petition without exhausting the appeal remedy.

4. The learned counsel for the petitioner submitted that the only issue involved in this case as to whether the petitioner, though not paid the entry tax, is entitled to adjust the same on the VAT paid by them at the rate of 14.5%, has already been considered and decided by this Court in the case of Kasi and Sethu Vs. Deputy Commercial Tax Officer (DG-CTO) Kumbakonam and another, reported in (2003) 131 STC 73 (Mad), in favour of the Assessee. He further submitted that the said decision is also affirmed by the Division Bench of this Court in W.A.Nos.1034 and 1035 of 2009 dated 28.09.2010. Therefore, he submitted that the Assessing Officer is not justified in demanding the payment of entry tax without making adjustments from and out of the tax already paid by the petitioner under the TNVAT Act.

5. The learned Special Government Pleader, on the other hand, submitted that since the total number of vehicles involved in this case is 141, the Assessing Officer has to make correlation exercise to find out as to whether the VAT has been paid for all the vehicles as claimed by the petitioner, even for the purpose of applying the decision of this Court in Kasi and Sethu case, and for granting the relief. Therefore, without doing such exercise, the Assessing Officer will not be in a position to grant the relief to the petitioner

automatically. He further submitted that in another case, the learned Single Judge of this Court, by order dated 10.09.2019 in W.P.Nos.36839 to 36841 of 2015, remitted the matter to the Assessing Officer to do the exercise of correlation for the purpose of proper application of Section 4 of the Entry Tax Act in that case. Therefore, the learned Special Government Pleader submitted that the matter may be remitted back to the Assessing Officer to redo the assessment, more particularly, when it is an admitted fact that the original reply was filed before the earlier Assessing Officer, whereas the impugned order was passed by the present Assessing Officer.

6. Heard both sides and perused the materials placed before this Court.

7. The order impugned in this writ petition is in respect of the demand of entry tax made against the petitioner relevant to 141 vehicles referred to therein. It is claimed by the petitioner that though the entry tax has not been paid to those vehicles, they have paid the VAT for all those vehicles and in view of Section 4 of the Entry Tax Act, which provides for tax reduction liability, the respondent/Assessing Officer ought to have considered the payment of VAT made by the petitioner and given adjustment of the amount towards the entry tax liability out of the amount already paid by the petitioner under VAT. There is no dispute to the fact that the VAT liability is 14.5% and the entry tax liability is 12.5%. The question as to whether the adjustment can be made even though such entry tax was not paid, has already been considered by this Court in Kasi and Sethu case, wherein the learned Single Judge after allowing the writ petition and quashing the impugned proceedings therein, granted liberty to the first respondent therein to set off the general sales tax already paid by the petitioner as against the entry tax payable for the vehicles concerned and to issue appropriate orders. It is seen that the said decision was followed in another case filed in W.P.Nos.11351 & 11352 of 2003 dated 28.04.2009 in the case of TVS Motor Company Limited Vs. The Entry Tax Officer and another. It is further seen that the above said order was put to challenge by the Revenue in W.A.Nos.1034 and 1035 of 2009, wherein, the Division Bench of this Court, by order dated 28.09.2010, disposed of the said writ appeals by observing as follows :

> "These two writ appeals are directed against the order dated

28.04.2009 in W.P.Nos.11351 and 11352 of 2003, whereby and whereunder the learned single Judge allowed the writ petitions based on the submission made by the learned counsel for the respondent that the issue involved has been covered by the judgment of this Court reported in 131 STC 73(Tvl.Kasi and Sethu -vs- The Deputy Commercial Tax Officer). The learned counsel appearing for the Department has also conceded that the issue involved in the writ petitions have been covered by the judgment cited supra.

2. The present writ appeals have been filed by the Department on the ground that the principles laid down in the decision cited supra has no application to the case on hand.

3. The learned counsel for the Department, who appeared before the learned single Judge, has not filed an affidavit contradicting the statement made in paragraph No.5 of the judgement. The learned Judge on the basis of the statement made by the counsel on both sides, followed the earlier decision of this Court. Another interpretation by another officer of the Government or by another law officer cannot be the basis for taking up the issue once again so as to get an interpretation as per their opinion.

4. In view of the above, the writ appeals are not maintainable and they are, accordingly, dismissed. No costs. Connected M.P. is closed."

8. Therefore, it is evident from the above findings of the Division Bench that the findings rendered in Kasi and Sethu case, is affirmed by the Division Bench of this Court though in another case, where the issue is one and the same. Therefore, this Court is of the view that by applying Kasi and Sethu case, the Assessing Officer has to make adjustment towards the liability of the entry tax at the rate out of the amount already paid by the petitioner towards VAT. When such adjustment has to be made only after making correlation exercise, since the vehicles involved in this case is numbering 141, needless to say that the petitioner has to place all the material

documents before the Assessing Officer to redo the exercise based on the materials so placed.

9. Accordingly, this Writ Petition is allowed and the impugned assessment order is set aside in part only in respect of the entry tax due and consequential penalty imposed on interstate purchase representing the turn over of Rs.12,16,33,340/- alone and consequently, the matter is remitted back to the Assessing Officer to redo the assessment after making necessary correlation in the light of the observation made in Kasi and Sethu case, and TVS Motor Company Limited case. The whole exercise shall be done by the Assessing Officer within a period of six weeks from the date of receipt of a copy of this order. It is made clear that before making such an order of assessment afresh, the Assessing Officer shall give adequate time and opportunity of personal hearing to the petitioner to file their returns for 141 vehicles with supportive documents. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mk
To

The Assistant Commissioner (ST)
Amaindakarai Assessment Circle
F.50, I Main Road,
2nd Floor, Anna Nagar East
Chennai-600 102.

+1cc to Mr.N.Inbarajan , Advocate SR.No. 89800

W.P.No.29097 of 2018

A.SK(20/11/2019)