



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD) No.15457 of 2015

and

M.P. (MD) No.1 of 2015 and W.M.P. (MD) Nos.6973 of 2016

WEB COPY

M/s.City Mobiles

represented by its Proprietor

M.Emam Jafeer Sathik

... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
Office of the Principal and Special Commissioner
of Commercial Taxes,
Ezhilaga, Chepauk, Chennai - 600 005.

2.The Assistant Commissioner (CT),
Munichalai Road Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Road,
Madurai - 625 001.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the second respondent in TIN :33064962530/13-14, dated 31.07.2015 and quash the same.

For Petitioner

: Mr.B.Rooban

For Respondents

: Mr.D.Muruganantham

Additional Government Pleader

ORDER

The instant writ petition has been filed against the impugned assessment order, dated 31.07.2015, passed by the second respondent in TIN :33064962530/13-14.

2.It is the case of the petitioner that he is a registered dealer under Tamil Nadu Value Added Tax Act, 2006 (herein after referred to as the Act). According to the petitioner, a pre-revision notice, dated 06.04.2015 has been issued by the second respondent under Section 27 of the Act, which was suitably replied by him in his letter dated 08.05.2015. According to the petitioner, the basis for issuing pre-revision petition under Section 27 of the Act, was that

<https://hcservices.ecourts.gov.in/hcservices/>

(a) the sale value was found lesser than the purchase value of

the goods.

(b) The petitioner has sold the goods without any value addition in respect of goods taxable at 14.5%. However, in respect of taxable goods at 5%, they are inferred that the petitioner has not disclosed the sales made out of the net purchase value of Rs.28,13,372/-. Therefore, there is suppression of sales in respect of goods taxable at 5% out of net purchase value. Since the petitioner has not given any value added on purchase of goods by adding normal gross profit and the entire value addition of gross profit have been sucked under the guise of commission received from seller, which resulted in gross loss of revenue to Government.

3. According to the petitioner, a detailed reply, dated 08.05.2015 was sent by the petitioner to the pre-revision notice, dated 06.04.2015 sent by the second respondent. In the said reply notice, the petitioner made a specific reference to Section 19(20) of the Act and have stated that the Assessing Officer shall reverse the input tax credit only to the extent of lesser cost of goods so sold. But, if a dealer has assessed or reported the turnover with profit, Section 19(20) is not operative. It is the further case of the petitioner that the second respondent has not accepted the returns and accounts for the so-called loss, they cannot reverse the input tax credit under Section 19(20) of the Act.

4. In the reply, the petitioner has further stated that the allegations of second respondent in the pre-revision notice that the petitioner had obtained gross loss and therefore, they are proposing to reject the petitioner's accounts and returns and thereby, to arrive at the estimated sales value of cell phones by adding 10% gross profit to the total purchase value (not price) and thereby, proposed to determine the total estimated sale value to the best of judgment assessment.

5. Therefore, according to the petitioner, the second respondent has not added normal gross profit at 10%, even as per their own proposal to revise the assessment, will go to show that the petitioner had obtained profit. According to the petitioner, as seen from his reply, the second respondent cannot take two different stands in the same assessment proceedings and that too for the same transaction between the same parties. In the reply, they have also stated that they are not having separate inventories for goods taxable at 14.5% and 5%. According to the petitioner, the ratio adopted by the second respondent under the pre-revision notice is not warranted, as they are dealing only with cell phones (with tab cell phone) and its accessories alone, which are taxable at 5% and not at 14.5%.

6. However, while arriving at the gross profit / loss, the second respondent has omitted to deduct the discounts received from the seller at the other end, though the same is accounted in the accounts and reported through profit and loss account as per Rule 10 (6)(c) of the TNVAT Rules. If this was considered, there cannot be



any variation and also there cannot be any such alleged gross loss. According to the petitioner, the fair method of calculation is hereunder:

Opening Stock of Cell phone	
and is accessories	- Rs.31,85,700/-
Add: Purchase during the year	- Rs.3,72,46/938/-
Less:Discount received as per Rule	
10(6) (c) of the TNVAT Act 2006	-Rs.38,47,617/-
Purchase price as per Section 2(40)	
r/w Section 2(41) of the TNVAT Act	-Rs.3,65,85,021/-
Less:Closing Stock	-Rs.25,33,410/-
Purchase Value of goods sold during	
this year	-Rs.3,40,51,611/-
Sales Value of goods sold during the year	-Rs.3,50,38,799/-
Gross Profit (+)	<u>Rs.9,87,188/-</u>

7. According to the petitioner, as seen from the above trading method, he obtained only gross profit and not gross loss as alleged in the pre-revision notice. In the reply, they have also referred to various judgments, passed by this Court and prayed for dropping of the revision of assessment proceedings.

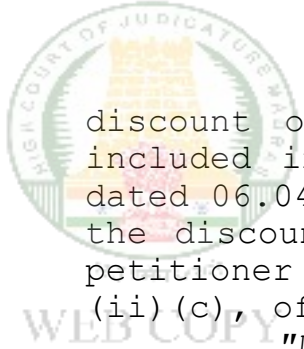
8. By the impugned assessment order, dated 31.07.2015, despite the objection raised by the petitioner, the second respondent reversed the input tax credit and directed the petitioner to pay tax of Rs.8,83,794/- and penalty of Rs.6,61,303/- for the assessment year 2013-14. Aggrieved over the impugned assessment order, the instant writ petition has been filed.

9. Heard Mr.B.Rooban, learned Counsel for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader for the respondents.

10. The learned Counsel for the petitioner submitted that the petitioner has not been afforded adequate opportunity by the second respondent before passing of the impugned assessment order. The learned Counsel for the petitioner drew the attention of this Court to Section 24(1) of the Act, which reads as follows:

"Section 24. Assessment of sales shown in accounts at low prices:-(1) If the assessing authority is satisfied that a dealer has, with a view to evade the payment of tax, shown in his accounts, sales or purchases of any goods, at prices which are abnormally low compared to the prevailing market price of such goods, it may, at any time within a period of five years from the expiry of the year to which the tax relates, assess or reassess the dealer to the best of its judgement on the turnover of such sales or purchases after making such enquiry as it may consider necessary and after giving the dealer a reasonable opportunity to show cause against such assessment."

11. The learned Counsel for the petitioner submitted that the



discount on the price allowed in respect of any sale cannot be included in the total turn over. But in the pre-revision notice, dated 06.04.2015 issued by the second respondent, they have included the discounts in the total turn over. The learned Counsel for the petitioner also drew the attention of this Court to Rule 10(6)(b)(ii)(c), of the TNVAT Rules which reads as follows:

"Wherever any credit notes are to be issued for discount or sales incentives by any dealer to another dealer after issuing tax invoice, the selling dealer shall pass a credit note without disturbing the tax component on the price in the original tax invoice, so as to retain the quantum of input tax credit already claimed by the buying dealers as well as not to disturb the tax already paid by the selling dealer."

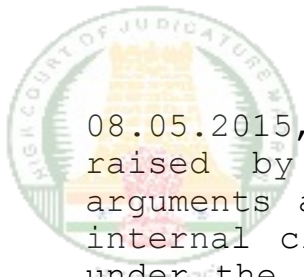
12. Referring to the above rule, the learned Counsel for the petitioner submitted that the tax component cannot be disturbed and the discount in the invoice cannot be added to the total turnover. He also relied upon Section 19(20) of the Act, which reads as follows:

"Section 19: Input Tax Credit: (20) Notwithstanding anything contained in this section, where any registered dealer has sold goods at a price lesser than the price of the goods purchased by him, the amount of the input tax credit over and above the output tax of those goods shall be reversed."

13. He further submitted that as per the above referred provision, only when the entire goods were sold at a price, lesser than the purchase price, the input tax credit can be reversed. According to him in the instant case, the petitioner has made profit and therefore, Section 19(20) of the Act will not get attracted. The learned Counsel for the petitioner also contended that no personal hearing was afforded to the petitioner by the second respondent before passing of the impugned assessment order.

14. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that an alternative efficacious appellate remedy is available to the petitioner under Section 51 of the Act. He further submitted that the objections raised by the petitioner in his reply, dated 08.05.2015, has been duly considered by the respondent and therefore, the only remedy available to the petitioner to challenge the impugned assessment order is by filing a statutory appeal under Section 51 of the Act. The learned Additional Government Pleader further submitted that the sales price is lesser than the purchase price and therefore, the provision of Section 19(20) of the Act is attracted.

15. This Court has perused and examined the impugned assessment order. Admittedly, the petitioner has sent a detailed reply, dated



08.05.2015, wherein, he has referred to the objections, which were raised by the learned Counsel for the petitioner during his arguments and relied upon various decisions of this Court and also internal circulars of the Department in support of his case. But, under the impugned assessment order, this Court finds that all the objections raised by the petitioner were not considered by the second respondent.

16.It is the case of the petitioner that he has shown gross profit while filing his monthly returns before the second respondent. But without application of mind, the second respondent has come to a wrong conclusion that the goods sold by the petitioner at a lesser price than the purchase price and the petitioner has shown losses in the monthly return submitted by him. This Court is also unable to find out from the assessment order as to why the second respondent has come to that conclusion, despite the fact that the petitioner is a profit making concern and has also disclosed gross profit, as seen from the reply, dated 08.05.2015, sent to the second respondent. However, as seen from the assessment order, no personal hearing was afforded to the petitioner by the second respondent before passing the assessment order. As held by the Honourable Division Bench of this Court in the case **G.V.Cotton Mills Private Limited vs Assistant Commissioner(CT), Coimbatore**, reported in **60 GSTR 418**, whether or not, the petitioner asks for a personal hearing, the second respondent is bound to afford personal hearing to the petitioner.

17.For the foregoing reasons, this Court is of the considered view that the second respondent has violated the principles of natural justice by not affording personal hearing to the petitioner and also for not having considered the vital objections raised by the petitioner in his reply, dated 08.05.2015, objectively under the impugned assessment order.

18.In the result, the assessment order, dated 31.07.2015 is hereby quashed and the second respondent is directed to pass final order after affording sufficient opportunity to the petitioner to raise all objections available to him under law and also grant him the right of personal hearing within a period of eight weeks from the date of receipt of a copy of this order.

19.With the aforesaid direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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To

1.The Commissioner of Commercial Taxes,
Office of the Principal and Special Commissioner
of Commercial Taxes,
Ezhilaga, Chepauk, Chennai - 600 005.

2.The Assistant Commissioner (CT),
Munichalai Road Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Road,
Madurai - 625 001.

+1cc to Mr.B.Rooban, Advocate, SR.No.55015

+1cc to M/s.Special Government Pleader,SR.No. 54933

W.P. (MD) No.15457 of 2015
18.03.2019

CMR

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