IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.01.2020
Pronounced on : 21.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.35430 of 2015
and M.P.No.1 of 2015

M/s. Sangam Motors,
Rep. By its Partner- K.R. Subramanian
S.F. No.364/2,
Opp. to TNEB, 4- Road,
Perambalur - 621 220.
Perambalure District .. Petitioner

vs.

1. The Assistant Commissioner (CT),
   Ariyalur Assessment Circle,
   Ariyalur, Ariyalur District.

2. The Appellate Deputy Commissioner(CT)
   Tirchy, Trichy District.
   (R-2 is impleaded as per order dated 26.11.2015 in M.P. No.3 of 2015 by this Court)

.. Respondents

Prayer: Writ Petition is filed under article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records on the file of the 2nd respondent in its proceedings made in VAT Appeal No.311/2014, dated 16.04.2015 and the consequential order passed by the 1st respondent in TIN:33523602628/2006-07, dated 29.09.2015 and to quash the same. (Prayer amended as per order dated 26.11.2015 in M.P. No.4 of 2015 by this Court)

For Petitioner : Mr.S. Rajasekar

For Respondent : M/s.Dhanamadhri
Government Advocate (Tax)

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O R D E R

The petitioner, a dealer of motor vehicles claimed transitional Input Tax Credit under Section 88(6)(a) of the TNVAT Act, 2006 on the entry tax borne paid on the closing stock of vehicles available as on 31.12.2006 on the eve of implementation of the TN VAT Act,2006 w.e.f 1.1.2007.

2. The petitioner declared the value of the closing stock as Rs.95,73,658/- and claimed a sum of Rs.5,72,268/- as the transitional Input Tax Credit.

3. By an order dated 18.04.2007, the Commercial Tax officer allowed a sum of Rs.5,72,260/- as Input Tax credit on the closing stock.

4. After the said order came to be passed, a notice dated 16.05.2014 was issued to the petitioner wherein it was contended by the first respondent that the petitioner has wrongly claimed credit at the rate of 6% on the stock value as the goods held on 31.12.2006 as against the applicable rate of 4% on the entry tax borne by the petitioner.

5. Therefore, the petitioner was called upon to reverse excess Input Tax Credit of Rs.1,89,086/- . Penalty under Section 27(4) of the TNVAT, 2006 was also proposed.

6. The petitioner also replied to the above notice which eventually culminated in an order dated 26.09.2014 of the 1st respondent. By the said order, the petitioner was called upon to reverse a sum of Rs.1,89,086/- and pay a penalty of Rs.94,543/- under Section 27(4) of the TN VAT, 2006. Meanwhile, the petitioner claims to have also paid the entire amount of Rs.1,89,086/- as was determined to be paid vide order dated 26.09.2014.

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7. Against the said order, the petitioner also filed VAT Appeal No.311/2014. By an order dated 16.04.2015, the second respondent set aside the order and remanded the case back for fresh disposal by the first respondent with the following observations :

> " On this fact the appellant contended that he has availed his closing stock input tax credit as on 31.12.2006 against Entry Tax

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payment at the time of repealed Act, Tamil Nadu General Sales Tax Act period. Thus, it is clear that the dealer has paid tax as entry tax at 6% to their seller. This Entry Tax payment not comes under the purview of the Tamil Nadu General Sales Tax Act, 1950 and also of Tamil Nadu Value Added Tax Act, 2006. The tax paid under the head of Entry Tax for entry of vehicle from other state into the state for local sales, can be adjusted by the dealer, who paid the tax earlier by one to one basis, for his future liability of local sales tax and other person cannot make this adjustment. Further, the appellant's seller who said to have collect this Entry tax, also hails his business within the State of Tamil Nadu hence it is not possible for the collection of Entry Tax from another dealer within the State. He, the appellant's seller could not collect the tax from anybody, but he collected and paid possibly, in the name of himself hence the appellant's availness of this tax is not possible. Hence all tax at the level of 6% should be reversed. Hence I set aside the order and remand back it for fresh disposal."

8. Pursuant to the aforesaid remand order, yet another notice dated 09.09.2015 was issued to the petitioner seeking to reverse the entire credit availed and allowed to the petitioner. It was stated that the Entry Tax paid to the local dealer by the petitioner did not come within the purview of TN VAT, 2006. The petitioner did not file any reply or participate in the said proceeding.

9. By the impugned order dated 29.09.2015 the 1st respondent has denied the entire amount of transitional credit availed by the petitioner. In the impugned order, the first respondent has extracted the operative portion of the order passed by the second respondent on 16.04.2015 and as held that since the petitioner has not replied to the show cause notice issued on 09.09.2015, the entire credit availed by the petitioner was liable to be disallowed.

10. The learned counsel for the petitioner submits that the petitioner complied all the requirements to the applicable Rules viz., Rule 10(3) of the TN VAT Rules, 2007 and it is pursuant to the same, appropriate orders were passed by the

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first respondent at the first instance on 18.04.2017 by allowing the Entry credit.

11. However, the 1st respondent thereafter issued notice dated 16.05.2014 and asked the petitioner to reverse credit availed in the excess of 2% which was confirmed by an order dated 26.09.2014. The petitioner preferred an appeal but accepted to pay the amount that was arrived by the first respondent vide dated 26.09.2014. It is therefore submitted that the impugned orders dated 16.04.2015 and 29.09.2015 seeking to deny the entire credit of the closing stock of the Motor vehicles cannot be sustained.

12. I have heard the learned counsel for the petitioner and the respondent. No counter has been filed on behalf of the respondent. After the writ petition was filed, the petitioner filed a miscellaneous petition to amend the prayer to quash order dated 16.4.2015 passed by the 2nd respondent. That petition was allowed by this Court.

13. Though the petitioner had the choice of filing appeal against order dated 16.4.2015 passed by the 2nd respondent Appellate Deputy Commissioner, the petitioner did not choose to challenge the same. Instead allowed the said order to be implemented and therefore the 1st respondent issued a notice dated 9.9.2015 which culminated in the impugned order dated 29. 9.2015.

14. Thus, the liability of the petitioner was crystallised and now after implementation of the said order and after filing the petition challenging the impugned order of the 1st respondent, an application for amendment of prayer was filed and was allowed. Since the issue pertains to legality of transitional credit availed on the entry tax burden purportedly borne by the petitioner, the writ petition is taken up for hearing without a counter.

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15. The issue to be decided in this writ petition is whether the petitioner was entitled to avail transitional credit of entry tax paid by a local dealer under section 88 (6) (a) of the T.N. VAT Act, 2006?

16. The Petitioner has not disputed the contention of the respondents in the impugned order that the petitioner had

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purchased the motor vehicles from a local dealers who hails from the State of Tamil nadu. Therefore, it follows that entry tax would have been paid only by the local dealer who sold the vehicles to the petitioner.

17. While selling the vehicles to the petitioner and paying the tax under TNGST Act, 1959, the local dealer would have set off the entry tax paid against the TNGST and passed on only the net of the tax paid under TNGST Act, 1959 to the petitioner.

18. Therefore, if at all, the petitioner would have been entitled to transitional credit under Section 88(6)(a) of the TN VAT Act, 2006 of only the net of the tax paid under TNGST Act, 1959 by such dealer and not on the burden of entry tax which was purportedly collected by the dealer from the petitioner illegally.

19. Even otherwise having purchased the motor vehicles from a local dealer in Tamilnadu, transitional input tax credit of entry tax paid under Tamil Nadu Tax on Entry of Motor Vehicles Into Local Areas Act, 1990 under section 88(6)(a) of the T.N. VAT Act, 2006 cannot be countenanced.

20. Therefore, at best the petitioner was entitled to avail transitional tax credit TNGST paid under TNGST Act, 1959 under the TN VAT Act, 2006 which reads as under:

> 88(1)......
>
> (2) .....
>
> (3) ......
>
> (4)........
>
> (5)........
>
> 6. (a) Every registered dealer shall be entitled to claim input tax credit for the sales tax paid under the said Act on the goods held in stock excluding capital goods, on the date of commencement of this Act, subject to the conditions and in the manner as may be prescribed :
>
> Provided that such goods should have been purchased not more than one year prior to the date of commencement of this Act and are eligible for input tax credit.

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(b) The registered dealer, who claims input tax credit on stock, shall furnish to the assessing authority, stock inventory with the details of purchases within 1[fifty nine] days from the date of commencement of this Act.

21. Transitional input tax credit of Entry tax on the closing stock is not permissible under Section 88(6)(a) of the TN VAT Act, 2006 even if the petitioner had actually imported motor vehicles and paid the entry tax on import of the motor vehicles from other state. If such tax was paid, such tax at best would be available for adjustment in terms of Section 4 of the Tamil Nadu Tax on Entry of Motor Vehicles Into Local Areas Act, 1990.

22. Thus, I am of the view that the petitioner had wrongly availed credit of the Entry tax paid by the local dealer who sold the motor vehicle to the petitioner. The entry tax paid by the selling dealer would have got subsumed into the TNGST Act 1959 paid by the dealer and only net of the TNGST would have been passed on to the petitioner.

23. Therefore, I find no infirmity in the impugned orders passed by the 2nd respondent on 16.4.2015 and by the 1st respondent on 29.09.2015.

24. In the light of the above discussion, the present writ petition is dismissed. Consequently, connected miscellaneous application is closed. No cost.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Assistant Commissioner (CT),
   Ariyalur Assessment Circle,
   Ariyalur, Ariyalur District.

2. The Deputy Commissioner(CT)
   Tirchy, Trichy District.

+1 CC to M/s.R. Hemalatha, Advocate sr 4027.
+1 CC to The Special Government Pleader(T) sr 4270.

W.P.No.35430 of 2015
and M.P.No.1 of 2015

SJ(CO)
SP(28/02/2020)

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