IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.37775 of 2015
and M.P.No.1 of 2015

KUN Motor Company Pvt. Ltd.,
(Represented by its Accounts Manager
R.C. Mainvannan)
No.20, G.S.T. Road,
Meenambakkam, Chennai - 600 027. ... Petitioner

vs

The Assistant Commissioner (CT),
Nandambakkam Assessment Circle,
No.17, Loganathan Nagar,
Second Street, Choolaimedu,
Chennai - 600 094. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the Respondent herein in TIN/33581324259/2008-2009, dated 05.11.2015, quashing the same.

For Petitioner : Mr. N. Sriprakash & Mr. N. Prasad

For Respondent : Mr. Mohammed Shaffiq
Special Government Pleader (Tax)

ORDER

The Petitioner has filed this writ petition, seeking for issuance of a Writ of Certiorari, to call for the records on the files of the Respondent herein in TIN/33581324259/2008-2009, dated 05.11.2015 and quash the same.

2. The impugned order has been passed pursuant to a notice issued on 02.04.2014 wherein it has been stated that the Petitioner has received from the manufacturer a trade discount for a sum of Rs.3,48,08,441/- which was to be treated as a value addition and hence proposed to assess it to tax at 12.5%. Accordingly, the notice proposed to demand a sum of Rs.43,51,055/- as tax due from the Petitioner.

3. The Petitioner replied to the said notice vide a reply dated 17.04.2014 explaining that the discount offered by the manufacturer, cannot be added to the taxable turn over of the

Petitioner for the sale effected to its buyers in the retail market.

4. It is the case of the Petitioner that at the time of personal hearing, the petitioner appeared and also produced relevant documents and prayed for dropping of the proceedings. However, the Respondent passed the impugned order. The Respondent has observed that the Petitioner had failed to produce the documentary evidence relating to the transactions.

5. Challenging the impugned order, the Petitioner submits that the discount offered by the manufacturer would actually reduce the price in the hands of the manufacturer who sold the cars to the Petitioner. It is submitted that such discount cannot be taxed in the hands of the Petitioner under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short the TNVAT Act, 2006) as Value Added Tax is payable on the turn over of sale as defined under the TNVAT Act, 2006 which reads as under:-

> "Section 19(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."

6. The learned counsel for the Petitioner submits that after the insertion of Section 19(20) of the TNVAT Act, 2006 with effect from 01.01.2007 vide Amendment Act, 22 of Special Provisions Act, 2010, notices were sought to be issued to dealers across the state to reverse the proportionate Input Tax Credit. In that context, a clarification was issued by the Commissioner of Central Excise on 04.11.2013 bearing reference No.BD3/44728/2010.

7. The learned counsel for the Petitioner drew attention to the relevant portion of the circular which reads as follows:-

> "Notwithstanding-anything contained in this section, where any registered dealer has sold goods at 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.
>
> The above subsection was introduced with effect from 19.08.2010. Later it was brought into force retrospectively from 01.01.2007 in TNVAT Act Special Provision Act, 2010.

2. The above facts have to be ensured by verifying the purchase and sale price per unit.

3. If the above two things are found in a business concern, the quantum of ITC which exceeds the output tax shall be reversed.

According to Sec: 2(41) Explanation II (ii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover.

According to Rule 10(6) (b) (ii) (c) 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.

Hence, the provision of Section 19(20) has nothing to do with levy of tax on the discount which has to be dealt with independently as per the provisions of the Act and circumstances of each case.

Further as per the directions of the High Court order dated 17.07.2013, the Joint Commissioners (CT) are instructed to send the consolidated report on the following before 30.11.2013."

8. The learned counsel for the Petitioner submits that the above clarification is inspired from the decision of Hon'ble Supreme Court in the case of Neyveli Lignite Corporation Limited Vs Commercial Tax Officer, Cuddalore and another, 124 STC 586 (SCC) wherein the Hon'ble Supreme Court following its earlier decision rendered in the case of State of Tamil Nadu Vs Kothari Sugars & Chemicals Ltd., 1996 101 STC 197 wherein in paragraph 19 & 20 which was held as follows:-

"19. What transpires from the above case law is that the amounts paid by way of consideration by the purchaser to the seller of goods in pursuance of the contract of sale can legitimately be regarded as purchase price while calculating the turnover for the purposes of sales tax legislation. What can legitimately be brought to sales tax or purchase tax is the aggregation of the consideration for the transfer of property. All the payments should have been made pursuant to the contract of sale and not de hors it. Any amount paid as ex gratia payment or as an advance cannot be the component of the purchase price and therefore cannot legitimately be included in the turnover of the purchasing dealer. Whether one of the components of the purchase price goes to the coffers of the seller or not will not cease to be so if it is necessary for completing the same. Thus the total amount of consideration for the purchase of goods would include the price strictly so called and also other amounts which are payable by the purchaser or which represent the expenses required for completing the sale as, the seller would ordinarily include all of them in the price at which he would sell his goods. But if the sale price is fixed statutorily then the only obligation of the purchaser under the agreement would be to pay that price only and no other amount can be included in the purchase price even if the same is paid by the purchaser to the seller.

20. The aforesaid observations clearly support the contention of the learned Solicitor-General before us, namely, that the sale price which has been fixed by the Fertiliser (Control) Order is the only obligation of the purchaser under the agreement to pay the same and no other amount including subsidy could be included in the purchase price. In E.I.D. Parry (2000) 117 STC 457 (SC); (2000) 2 SCC 321, however, the court came to the conclusion that the aforesaid principle was not applicable because the planting subsidy was given to the cane growers as the time of delivery of sugarcane by them. "The planting subsidy was given by the appellants to the cane growers not by way of agrarian reforms or a social welfare measure. The appellants had given planting subsidy as purchasers of sugarcane and as a part of the consideration for which the sugarcane was ultimately purchased by them". The court regarded this subsidy as a deferred payment and, therefore, includible in the taxable turnover. It is clear that this subsidy was paid

> pursuant to an agreement between the growers and the purchasers and the payment was made at the time of the sale. In the present case, however, there is no agreement between the appellant and the purchasers of fertilise for payment of any amount by the purchasers to the manufacturer in excess of the price fixed under the Fertiliser (Control) Order. Subsidy is paid to the appellant not by or on behalf of the purchasers, but is paid by the Government of India for different reasons and under its own scheme and after a budgetary allocation. As we have already observed, the scheme of payment postulates the right of the appellant to receive the subsidy on its clearance from the factory and not necessarily after the sale of fertiliser. Even before the sale of fertiliser, the right to receive the subsidy arises and under the circumstances, it cannot be said that subsidy would form part of the sale price or turnover of the appellant."

9. The learned counsel for the Petitioner further submits that the impugned order has been passed without following the principles of natural justice, inasmuch as the records were submitted during the personal hearing before the Respondent have not been discussed in the impugned order and therefore the Petitioner is entitled to challenge the impugned order before this Court under article 226 of the Constitution of India.

10. Defending the impugned order, the learned Special Government Pleader for the Revenue submits that the impugned order is well-reasoned and requires no interference. He further submits that the Petitioner has an alternate remedy against the impugned order before the Appellate Deputy Commissioner under Section 51 of the TNVAT Act, 2006 and therefore the Petitioner should be directed to approach the Assistant Commissioner. He further submits that the trade discount received by the Petitioner from the manufacturer has to be added to the taxable turn over in the hands of the Petitioner. He therefore submits that even on merits, it is not maintainable.

11. I have heard the learned counsel for the Petitioner and the learned Special Government Pleader for the Respondent.

12. I have considered the impugned order and the notices pursuant to which the impugned order came to be passed. There is no dispute that the Petitioner is a dealer in motor cars and had received trade discount from the manufacturer from whom it had purchased the cars for retail sales at its show rooms. The

trade discount which has been offered by the dealer is an incentive given by the manufacturer based on the performance of the Petitioner in the retail market. The trade discount offered by the manufacturer to the Petitioner does not in any manner enhance the taxable value of the motor cars sold by the Petitioner to the retail buyer at its show rooms.

13. I therefore find that there is no basis on which the aforesaid amount of Rs.3,48,08,441/- can be taxed as taxable turn over of the Petitioner. The two transactions are independent transactions. One transaction is between the manufacturer who is also a dealer who had passed on incentives to the Petitioner and the second transaction between the Petitioner and its buyers of its retail show room to whom the Petitioner has sold the cars. As these two are independent transactions there is no basis on which the trade discount passed to it by the manufacturer(dealer) to the Petitioner can be added in to the taxable turn over of the Petitioner for the purpose of assessment under the TNVAT Act, 2006.

14. In the light of the above discussion, the writ petition stands allowed even though the Petitioner has an alternate remedy by way of appeal. These observations is being made as there are no disputed question of fact involved in the present writ petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CJ Conf)

// True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Nandambakkam Assessment Circle,
No.17, Loganathan Nagar,Second Street,
Choolaimedu,Chennai - 600 094.

+1cc to Mr.N.Inbaraja, Advocate, SR.No.3626.

W.P.No.37775 of 2015
and M.P. No.1 of 2015

GP(CO)
CSR: 24.02.2020