IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Writ Petition No.8315 of 2014
and
MP.No.1 of 2014

M/s.Orange Traders
Rep. by its Managing Partner
105, Thalakaraipudur,
Periavettuvapalayam,
Perundurai - 638052. ...Petitioner

Vs.

The Assistant Commissioner (CT) (FAC)
Perundurai. ...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, to call for the records of the respondent herein in TIN:33122924430/2009-10 and quash the order dated 13.01.2014 passed therein.

For Petitioner : Mr.P.V.Sudakar

For Respondent : Mr.A.N.R.Jayaprathap
Government Advocate (T)

ORDER

In this Writ Petition, the petitioner has challenged the impugned order dated 13.01.2014 passed by the respondent Assistant Commissioner (CT) (FAC) (hereinafter referred as respondent) for the Assessment Year 2009-10.

2. The impugned order was passed pursuant to an order dated 27.05.2013 passed by the Appellate Deputy Commissioner (CT) (FAC) (hereinafter referred as Appellate Deputy Commissioner) in bearing reference A.P.No.VAT/011/2012. Pursuant to the order of the Appellate Deputy Commissioner, the respondent issued a notice dated 10.10.2013 under the provision of the TNVAT Act, 2006 and called upon the petitioner to file correct and complete returns with all details of purchase and sales effected during the period from April 2009 to August 2009 and from January 2010 to March 2010.

3. It was followed by another notice dated 10.10.2013 issued under the provision of the CST Act, 1956 calling upon the petitioner to file correct monthly returns for the 10 months in the year 2009-2010 (including September 2009 and October 2009) along with " C" declaration form within seven days of receipt of the notice.

4. The petitioner was thereafter issued with a fresh re-assessment notice dated 29.11.2013, wherein, it was stated that during the period in dispute, the petitioner had purchased the scrap steel for an amount of Rs.14,34,59,353/-. Whereas, the petitioner had reported the purchased turnover of Rs.14,29,28,992/- and thereby, suppressed the purchase turnover of Rs.5,30,361/-.

5. In the said notice, it was also stated that though the petitioner had purchased the scrap steel for an amount of Rs.14,34,59,353/-, the petitioner sold the scrap steel for an amount of Rs.12,31,99,745/- and therefore, the input tax credit availed by the petitioner in excess was liable to be reversed.

6. In the said notice, it has been stated that for the months of August 2009, January 2010 to March 2010, the petitioner was liable to reverse the input tax credit amounting to Rs.18,48,874/- under Section 27(2) of the TNVAT Act, 2006, in as much as the credit was availed beyond the period prescribed under Section 19(11) of TNVAT Act, 2006.

7. The notice also proposed to invoke the Section 19 (20) of the TNVAT Act, on the sales effected between September 2009 and October 2009 on the ground that the petitioner had sold the goods for a lesser value and thus, liable to reverse an amount of Rs.7,54,781/- towards the input tax credit.

8. In other words, the said notice sought to recover the amount of Rs.26,03,655/- [18,48,874 + 7,54,781] as the input tax credit allegedly wrongly availed under Section 19 (11) of the TNVAT Act, 2006, for the months of August 2009 and January to March 2010 and under Section 19(20) of the Act, for the months of September 2009 and October 2009 being the proportionate credit availed in excess amounting to Rs.7,54,781/- . That apart, the taxable turnover was proposed to be revised as follows:-

Purchases of scrap reported	: Rs.14,29,28,992/-
Purchases not reported and suppressed	: Rs. 5,30,361/-

Total purchases	: Rs.14,34,59,353/-
Add: 10% towards freight and gross profit	: Rs. 1,43,45,935/-
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Total and taxable turnover proposed: Rs.15,78,05,288/- @ 4%

ITC proposed to be reversed u/s. 27(2):-

ITC not claimed within the period prescribed and availed wrongly related to the returns for August 2009 and January to March 2010. : Rs.18,48,874/-

ITC proposed to be reversed u/s. 19(20) for the months of September 2009 and October 2009. : Rs. 7,54,781/-

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Total ITC proposed to be reversed: Rs. 26,03,655/-

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9. After adjusting the credit, the notice called upon the petitioner to pay tax on the suppressed turnover of Rs.13,84,222/- along with proposed penalty at 150% on the tax, amounting to Rs.20,76,333/-. The petitioner filed its objection before the respondent, which was culminated in the impugned order.

10. Heard the learned counsel for the petitioner and learned Government Advocate appearing for the respondent.

11. The learned counsel for the petitioner submits that as far as the invocation of Section 24 of the TNVAT Act, 2006 read with Rule 8(3) of the TNVAT Rules, 2006 is concerned, the differences between the purchase value and the sale price value should be more than 15% and in this case, the difference which has been arrived by the respondent even though the exaggerated was still lesser than 15% and therefore, the invocation of Section 24 of the Act was not justified.

12. As far as the denial of input tax credit under Section 19(11) of the Act is concerned, it is submitted that the petitioner had filed its return in time which was duly acknowledged on 22.09.2009 and therefore, the denial of input tax credit for the months of August 2009 and January 2010 to March 2010 amounting to Rs.18,48,874/- was not justified.

13. The learned counsel for the petitioner has produced the copy of the acknowledgement signed by the office of the respondent duly acknowledging the receipt of the return for these months on 22.09.2009. He therefore submits that the invocation of Section 19(11) of the TNVAT Act, 2006 was without any basis.

14. As far as the invocation of Section 19(20) of the

TNVAT Act, 2006 is concerned, the learned counsel for the petitioner submits that the issue is squarely covered by the decision of the Hon'ble Supreme Court in Jayam and Company Vs. Assistant Commissioner and Another, (2016) 15 SCC 125, wherein, the Court held as follows:-

> 19. When we keep in mind the aforesaid parameters laid down by this Court in testing the validity of retrospective operation of fiscal laws, we find that the amendment in question fails to meet these tests. The High Court has primarily gone by the fact that there was no unforeseen or unforeseeable financial burden imposed for the past period. That is not correct. Moreover, as can be seen, sub-section (20) of Section 19 is altogether new provision introduced for determining the input tax in a specified situation i.e. where goods are sold at a lesser price than the purchase price of goods. The manner of calculation of ITC was entirely different before this amendment. In the example, which has been given by us in the earlier part of the judgment, "dealer" was entitled to ITC of Rs 10 on resale, which was paid by the dealer as VAT while purchasing the goods from the vendors. However, in view of Section 19(20) inserted by way of amendment, he would now be entitled to ITC of Rs 9.50. This is clearly a provision which is made for the first time to the detriment of the dealers. Such a provision, therefore, cannot have retrospective effect, more so, when vested right had accrued in favour of these dealers in respect of purchases and sales made between 1-1-2007 to 19-8-2010. Thus, while upholding the vires of sub-section (20) of Section 19, we set aside and strike down Amendment Act 22 of 2010 whereby this amendment was given retrospective effect from 1-1-2007.

15. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent.

16. It is noticed that the petitioner had entered into an agreement with M/s.Fairdeal Supplies limited, on 02.07.2009. Under the agreement, the petitioner was entitled to lift the dismantled machinery at the South India Visage Company at a scrap value of Rs.19.25 per kg and for every 225 tonne of material lifted, the petitioner was entitled to receive 15 tons of stainless steel free. Under these circumstances, the petitioner purchased the scrap for a sum of Rs.14,29,28,992/-. However, the said Fairdeal Supplies

Private Limited decided to sell the steel by itself and therefore issued credit to the petitioner for the proportionate value. The petitioner sold the steel scrap for a sum of Rs.12,31,99,745/-. To invoke Section 24 of the TNVAT Act, 2006 read with Rule 8(3) of the TNVAT Rules, 2007, the difference between the purchase and sale price should be more than 15%. The difference between the purchase value of Rs.14,34,59,353/- and the value of sale of Rs.12,31,99,745/- is lesser than 15%. Therefore, on this ground, the countermanding of valuation adopted by the petitioner is unsustainable.

17. As far as the denial of input tax credit under Section 19(20) of the Act is concerned, the demand cannot be sustained in the light of the decision of the Hon'ble Supreme Court in Jayan and Company referred to supra.

18. As far as the denial of input tax credit under Section 19(11) is concerned, the petitioner has produced the proof to show that the returns were filed by the petitioner for the months of August 2009, January 2010 to March 2010. The petitioner has shown extract from the acknowledgement book of the Sales Tax Practitioners, to show that the returns were filed for the months of October 2009, February 2010, March 2010 and January 2010. However, this would therefore require a proper verification.

19. Therefore, this case stands remitted back for redetermination amount of credit to be recovered from the petitioner under Section 19(11) of the TNVAT Act, 2006. The impugned order is therefore partly quashed as far as the demand confirmed vide the impugned order qua alleged violation of Section 19(20) of the Act in light of decision of Jayam and Company referred to supra and the demand qua difference tax under Section 24 of the TNVAT Act, 2006, on account of valuation. The respondent is therefore directed to pass a speaking order qua demand
under Section 19(11) of the TNVAT Act, 2006, within a period of three months from the date of receipt of a copy of this order. Needless to state, before passing order the petitioner shall also be heard.

20. This Writ Petition stands disposed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO MDU)

//True Copy//

Sub Assistant Registrar

drl / jen

To

The Assistant Commissioner (CT) (FAC)
Perundurai.

+1cc to the Special Government Pleader(Taxes), S.R.No. 17383

W.P.No.8315 of 2014

MR(CO)
GN(26/06/2020)