IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.01.2020

Pronounced on : 19.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.2961 of 2017
and W.M.P.No.2846 of 2017

M/s.Super Audio (Madras) P.Ltd.,
By its Director Mr.Navin N.Daswani
Carex Building, 2nd Floor,
No.713, Anna Salai,
Chennai 600 006. ... Petitioner

vs

1. The Assistant Commissioner (CT) (FAC)
Anna Salai Assessment Circle,
4th Floor, CT Annexe Building,
Greams Road,
Chennai - 600 006.

2. The Revision Authority of Advance Ruling
Commercial Taxes Department,
Ezhilagam, Chepauk,
Chennai 600 005. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records relating to the impugned order dated 23.01.2017 passed by the 1st respondent issued in respect of TIN No.33170641071/2013-14 of the petitioner company and pertaining to the assessment year 2013-14 and to quash the same, as the same has been passed in total violation to the principles of natural justice and without jurisdiction rendering the same untenable in law.

For Petitioner : Mr.N.Viswanathan

For Respondents : Mr.ANR.Jayaprathap
Govt. Advocate (Tax)

ORDER

Heard learned counsel for the petitioner and the respondents.

2. The petitioner is aggrieved by the impugned order dated 23.1.2017 passed by the respondent in TIN/33170641071/2013-14. The impugned order has been passed pursuant to a notice issued to the petitioner on 31.10.2016 wherein objections were pointed out. The petitioner for a detailed reply.

3.The impugned order merely records the submission of the petitioner in response to the said notice issued to the petitioner with the following observation:-

> '' The objections filed by the dealers are considered by me in depth and discussed below. Based on the clarification No.ACAAR.50/2011-12 D.Dis.ActsCell II/7660/2012 dated 25.7.2012, the liability of tax at 14.5% is confirmed on the turnover of Rs.42,68,685/- and therefore order passed as below.
>
> Regarding the reversal of the Input tax credit under Section 19(5)(c) of the Act, the citation referred by the dealers are not relevant to this issue and therefore the reversal of Input tax credit for Rs.9,067/- is confirmed and order passed as below.
>
> Regarding the reversal of the Input tax credit under Section 19(2)(v) of the Act, the dealer is accepted the liability and therefore confirmed and order passed as below.

Details	Turnover	Difference of tax	Tax due/Reversal amount
Sale of Music/Film Audio Compact Disc, video compact disc, digital video etc., is	Rs.42,68,685	9.5%	Rs.4,05,525
Reversal of ITC under Sec.19(5)(c) for C forms not filed			Rs. 9,067

Details	Turnover	Difference of tax	Tax due/Reversal amount
Reversal of ITC under Sec.19 (2)(v) for Forms filed			Rs. 2,832
Total demand due			Rs.4,17,424
Amount paid			Rs. 2,832
Balance due			Rs.4,14,592

4. A cursory reading of the above paragraph extracted from the impugned order shows that the said order is a non-speaking order and therefore this is a case fit for remitting the case back to the respondent to pass a speaking order.

5. Since the dispute can be disposed in the light of subsequent development, I am therefore disposing the present writ petition on merits on one of the issues involved.

6. The petitioner had claimed that the music/film audio compact disc/video disc/digital video disc et were liable to tax as Information Technology Product under Serial No.68 of Part B of the 1st schedule to the Tamil Nadu VAT Act, 2006.

7. Under these circumstances, a notice dated 31.10.2016 was issued to the petitioner. Since the clarification of the Authority for Clarification and Advanced Ruling dated 25.7.2012 was against the petitioner, the respondent was justified in confirming the demand to that extent at the time of passing the impugned order.

8. However, post facto, the above clarification of the Authority for Clarification and Advanced Ruling under section 48A of the T.N. VAT Act, 2006 given earlier on 25.7.2012 to the petitioner clarifying that music/film audio compact disc/video disc/digital video disc etc were liable to tax at 14.5% under Entry 13-A (e) of Part C of the 1st Schedule to the Tamil Nadu VAT Act, 2006 was reviewed and a review order has been passed on 19.11.2018. As per the above clarification it has been clarified as under:-

> “Recorded and Pre-Recorded Audio and Video CDs and DVDs” are liable to VAT and 5% under

Entry 68 (5) (d) of Part B of 1st Schedule to the T.N. VAT Act, 2006 and the order issued earlier in No.ACAAR.50/2011-12 (Cell IAI/7660/2012) dated 25.7.2012 stands modified".

9. In the light of the above, the demand confirmed by the impugned order insofar as dispute relating to rate of tax on the sale of these items are concerned are answered in favour of the petitioner and accordingly to that extent the impugned order is quashed.

10. As far as denial of input tax credit on inter-state sales to unregistered dealers under Section 8 (2) of the Central Sales Tax Act, 1956 and on those transactions where the petitioner was unable to produce C Forms and sale to register dealers but where the petitioner had failed to furnish necessary C Form, there are no merits.

11. The period in dispute is 2013-14. The Amendment to Section 19(5) was in the year 2015. It deleted sub-clause (c) to Section 19(5). It was

not intended to be retrospective in nature. If it was so, the state legislature would have expressly stated at the time of amendment in 2015.

12. Since the said amendment cannot be said to be retrospective the decision cited by the learned counsel for the petitioner in the following cases are not relevant:

i) Kolhapur Cane Sugar Works Ltd versus Union of India 2000 (119) ELT 257 (Supreme Court);

ii) Rayala Corporation Private Limited. Versus Director of Enforcement 1970 A I R SC 494;

iii) Shree Bhagwati Steel Rolling Mills Versus Commissioner of Central Excise 2015 (326) ELT 209 (Supreme Court)

iv) Sha KantilalJayanthilal Vs State of Tamil Nadu 2016 (339) ELT 520 (Mad) .

13. That apart the amounts involved are too meagre. Therefore, though the impugned order of the 1st respondent is non-speaking on the above issue, I am not inclined to interfere.

14. If the petitioner so desires, it may file an appeal before the appellate authority within a period of 30 days from the date of receipt of this order insofar as denial of input tax credit under Section 19(5) of the Tamil Nadu VAT Act, 2006 is concerned.

15. In case such an appeal is filed, the appellate authority may dispose the appeal on merits without insisting on the limitation and without getting influenced by the above observation.

16. The present writ petition is disposed with the above observation. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

kkd

To

1. The Assistant Commissioner (CT) (FAC)
   Anna Salai Assessment Circle,
   4th Floor, CT Annexe Building,
   Greams Road,
   Chennai - 600 006.

2. The Revision Authority of Advance Ruling
   Commercial Taxes Department,
   Ezhilagam, Chepauk,
   Chennai 600 005.

+1cc to Mr.N.Viswanathan, Advocate SR.No.14037

+1cc to Special Government Pleader(Taxes), High Court, SR.No.14699

W.P.No.2961 of 2017
and W.M.P.No.2846 of 2017

GP(CO)

GMY(18/03/2020)