

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.1.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

Tax Case Revision No.45 of 2019

M/s.First Technologies (India) Pvt. Ltd.,
B-56, PIPDC Industrial Estate,
Mettupalayam, Puducherry-9

...Petitioner

Vs

The Appellate Assistant Commissioner (CT),
Commercial Taxes Department,
Puducherry.

...Respondent

REVISION under Section 51 of the Puducherry Value Added Tax Act, 2007 against the order dated 25.02.2019 passed by the Puducherry Value Added Tax Appellate Tribunal, Puducherry in T.A.No.41 of 2017 for the assessment year 2008-09.

For Petitioner : Mr.P.V.Sudhakar
For Respondent : Ms.V.Usha,
Additional Government Pleader

Order of the Court was made by T.S.SIVAGNANAM,J

This revision has been filed by the petitioner – dealer under Section 51 of the Puducherry Value Added Tax Act, 2007 ('the Act' for brevity) challenging the order dated 25.02.2019 made in T.A.No.41 of 2017 on the file of the Puducherry Value Added Tax Appellate Tribunal, Puducherry ('the Tribunal' for brevity) for the assessment year 2008-09.

2.The petitioner has raised the following questions to be decided in this case:

“(i) Whether the Appellate Tribunal is right in its conclusion that the assessment order dated 16.09.2016 passed for the assessment year 2008-09 is within the period of limitation stipulated under Section 24(6) of the Puducherry Value Added Tax Act ?

(ii) Whether the order passed by the Appellate Tribunal is right in the light of the judgment of the Hon'ble Supreme Court dated 12.10.2018 in the case of TVS Motor Company Ltd. Vs. State of Tamil Nadu and others in Civil Appeal Nos.10560 to 10564 of 2018 ?

(iii) Whether the order passed by the Appellate

Tribunal affirming the reversal of input tax credit on the inter-state sales effected to Government Departments is sustainable in the light of the law laid down by the Hon'ble Supreme Court in Civil Appeal Nos. 10560 to 10564 of 2018 holding that a dealer effecting inter-state sales to Government Departments is entitled to the benefits of input tax credit and the Government Departments are deemed to be registered dealers?"

3.We have heard Mr.P.V.Sudhakar, learned counsel appearing for the petitioner – dealer and Ms.V.Usha, learned Additional Government Pleader appearing for the respondent – Department.

4.Identical questions were decided by us in the petitioner's own case for the earlier assessment year in ***T.C.R.No.11 of 2019 dated 04.01.2021.***

The operative portion of the order reads as follows:

“5.The issue, which falls for consideration in this revision, is as to whether the dealer is entitled to concessional rate of tax in respect of inter-state sales effected by them to the Defence Department.

6.The Assessing Officer, the Appellate Assistant Commissioner and the Tribunal decided against the dealer on the ground that the dealer did not file Form-C Declarations and therefore, directed the reversal of input tax credit availed by the dealer. The decision of the Assessing Officer, the First Appellate Authority and the Tribunal cannot be faulted because on and after 01.4.2007, the procedure of issuing Form-C Declarations in respect of the transactions done by third party dealers with the Defence and the Government Departments was dispensed with. The consequence, which followed out of it was that the Government Departments and the Defence Departments were deemed to be treated as unregistered dealers and a higher rate of tax was levied on such inter-state transactions.

7.However, the position after October 2018 is different in the light of the decision of the Hon'ble Supreme Court in the case of **TVS Motor Company Ltd. Vs. State of Tamil Nadu [reported in 70 GST 501]** wherein it was held that if a dealer makes sales to other State Government Departments, the benefit of input tax credit should be allowed without insisting upon furnishing of Form-C Declarations and in order to avail this benefit, a certificate from the said State Government Department, to whom the

supplies were effected, should be obtained by the dealer and submitted to the Assessing Officer.

8.The learned counsel appearing for the petitioner has referred to paragraph 47 of the said judgment, which reads as hereunder :

“Thus, wherever the State Government buys, sells, supplies or distributes goods, it shall be deemed to be the dealer for the purposes of TNVAT Act. At the same time, TNVAT Act does not require registration by the State Government inasmuch as [Section 38](#) which deals with registration of dealers explicitly provides, under Sub-Section (8) thereof, that this provision shall not apply to any State Government or Central Government. A conjoint reading of the aforesaid two provisions would show that when a sale is made to the State of Karnataka, it is made to a dealer but that dealer is under no obligation to get itself registered under the TNVAT Act. Because of this exemption, no State Government does that and since it is not a registered dealer, it would not be in a position to issue any Form C. But for that, the genuineness of sales made to a State Government cannot be doubted. This situation puts those dealers who are making sales to the State Government in disadvantageous position, even when it is clear that there is no possibility of tax evasion as there cannot be any such apprehension in case of sales to the State Government. We may point out here that benefit of ITC is given whenever sale is made to a dealer outside State of Tamil Nadu and the said dealer is a registered dealer.”

9.Though such a legal contention has been raised

before us, we find that it was not raised before the Assessing Officer or before the First Appellate Authority or before the Tribunal. Therefore, we cannot test the correctness of the orders passed by the Lower Authorities and that of the Tribunal by referring to a decision, which was rendered after the impugned order was passed. That apart, to apply the decision of the Hon'ble Supreme Court, the factual position has also to be taken note of, which cannot be done by us while exercising our revisional jurisdiction under Section 51 of the Act.

10. Thus, taking note of the submissions of the learned counsel for the petitioner – dealer and taking note of the said decision of the Hon'ble Supreme Court, we deem it appropriate to give one more opportunity to the petitioner – dealer to approach the Tribunal by raising the contention, which is now raised before us and by placing reliance on the said decision of the Hon'ble Supreme Court and other contentions, both legal and factual.

11. In the light of the above, the tax case revision is allowed, the impugned order passed by the Tribunal is set aside and the matter is remanded to the Tribunal for a fresh consideration. The Tribunal shall permit the petitioner – dealer to file additional grounds of appeal duly supported by decisions and thereunder, the appeal shall be heard and

*decided on merits and in accordance with law.
Consequently, the substantial questions of law raised are
left open. No costs.”*

5.We find that there is no distinguishing feature to take a different stand in the present revision. Thus, by applying the referred decision, the tax case revision is allowed, the impugned order passed by the Tribunal is set aside and the matter is remanded to the Tribunal for a fresh consideration. The Tribunal shall permit the petitioner – dealer to file additional grounds of appeal duly supported by decisions and thereunder, the appeal shall be heard and decided on merits and in accordance with law. Consequently, the questions framed for consideration are left open. No costs.

18.1.2021

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Index: Yes/No

Internet: Yes/No

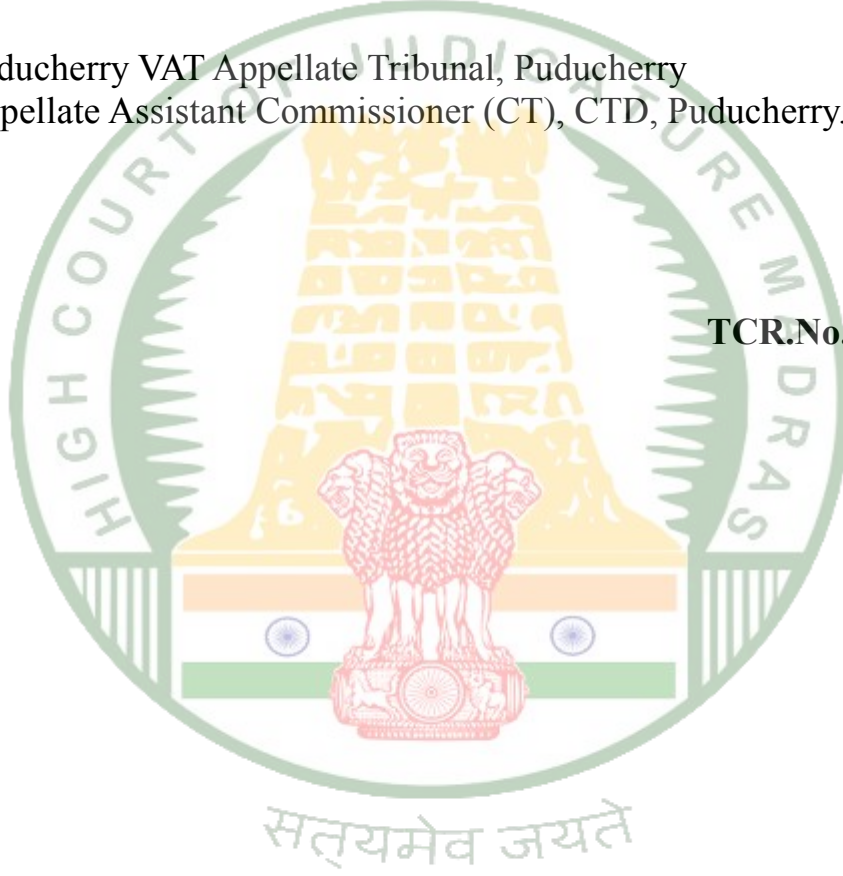
Speaking Order/Non-speaking Order.

T.S.SIVAGNANAM,J
AND
R.N.MANJULA,J

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To

- 1.The Puducherry VAT Appellate Tribunal, Puducherry
- 2.The Appellate Assistant Commissioner (CT), CTD, Puducherry.



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