BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.02.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.14305 & 14306 of 2011 and

M.P.(MD)Nos.1 & 1 of 2011

Tvl.Premier Systems & Peripherals,
Rep. by its Proprietor: K.Senthilnathan,
153L, North Veli Street, Madurai -1. ... Petitioner in both petitions

Vs.

The Assistant Commissioner(CT),
West Tower Street Circle,
Madurai. ... Respondent in both petitions

Prayer in W.P.(MD)No.14305 of 2011 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent herein in TIN No.33854801124/09-10 dated 18.11.2011, quash the same as illegal, against the principles of natural justice and without jurisdiction.

Prayer in W.P.(MD)No.14306 of 2011 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent herein in TIN No.33854801124/10-11 dated 18.11.2011, quash the same as illegal, against the principles of natural justice and without jurisdiction.

(in both W.Ps.)
For Petitioner : Mr.A.Chandrasekaran

For Respondent : Ms.J.Padmavathi Devi,
Special Government Pleader.

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C O M M O N O R D E R

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.

2. The writ petitioner is a dealer registered with the

respondent. The subject matter of these writ petitions pertains to the assessment years 2009-10 and 2010-11. The writ petitioner had purchased computers, their peripherals and accessories from M/s.DELL India Private Ltd. The petitioner had paid tax on their purchases and based on the same, claimed Input Tax Credit also. The petitioner was assessed on a self assessment basis and their returns were also deemed to have been accepted. Thereafter, pre-revision notices were issued and after getting the explanation of the petitioner, the impugned orders were passed reversing the Input Tax Credit already claimed by them and also levying consequential tax and penalty. Questioning the same, these writ petitions have been filed.

3. The learned counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petitions and wanted this Court to dismiss the writ petitions.

4. The prayer is strongly opposed by the respondent.

5. The respondent has also filed a detailed common counter affidavit. The learned Special Government Pleader appearing for the respondent reiterated all the averments set out therein. The basic stand of the respondent is that the petitioner's vendor, namely, M/s.DELL India Pvt. Ltd. was allowed to set up their manufacturing unit at Sriperumbudur and sales tax exemption on their sale was also given.

6.The learned Special Government Pleader would draw my attention to the fact that the exemption granted to M/s.DELL India Pvt. Ltd. vide G.O.(Ms.)No.134 (Industries (IT) Department dated 16.10.2006 was passed on as such to the petitioner herein, as it is evident from the relevant tax invoices. Therefore, citing this, the respondent wants this Court to sustain the orders impugned in the writ petitions.

7.I carefully considered the rival contentions and went through the materials on record.

8. There is no dispute that the petitioner's vendor was granted certain financial benefits by the Government of Tamil Nady by issuing G.O.Ms.No.134 Industries (IT) Department dated 16.10.2006. Now the question that arises for my consideration is whether the sales tax exemption was granted to M/s.DELL India Pvt. Ltd. and whether the collection of tax from the petitioner by M/s.DELL India Pvt. Ltd. was illegal. The learned counsel appearing for the petitioner would point out that though the Government Order employs the expression “sales tax exemption”, what was given to M/s.DELL India Pvt. Ltd. was only Investment Promotion Subsidy. To answer the

question, it is necessary to extract Clause (VI) of G.O.(Ms.) No. 134 Industries (IT) Department dated 16.10.2006 which reads as follows:-

" 2. ..

...

VI. **Sales tax exemption on DTA sales:**

(a) It was noted that DELL's project is a pioneer project and its brand equity will attract substantial investment by its vendors. Considering this, it is decided that subject to DELL investing about Rs.138 Crores (USS 30 million) in eligible fixed assets in the first five years and additional investments of not less than Rs.138 Crores(USS 30 million) ie.276 crores(S6 million) in total in eligible fixed assets prior to the completion of the 10th year from the date of the MOU between DELL and Government of Tamil Nadu, DELL will be extended full exemption from TNGST and GST on DTA sales for 14 years for the entire project. This exemption would be applicable for first sale of computers from SEZ to DTA. Sales tax would be payable on second and subsequent sales. Further, this exemption will not have any ceiling with reference to the investment in eligible fixed assets.

(b) In the event of DELL not making the additional investment in eligible fixed assets of Rs.138 Crores between 6th and 10th year or earlier. DELL's project will be granted exemption from TNGST and CST on first sales to DTA from SEZ for a period of 10 years as announced in Budget for 2006-2007. This exemption will not be subject to any ceiling at eligible investment in fixed assets. Sales tax would be payable on second and subsequent sales.

(c) Once the GoTN introduces VAT, Government will design a suitable mechanism and policy to sustain that the tax collected under Tamil Nadu VAT laws and/or Central Sales Tax Act are refunded fully to DELL within a period of not exceeding 30 days. Government will also make best efforts to draft and implement a simultaneous reimbursement mechanism to avoid any delay and impediment."

9.It can be seen that the Government Order was issued when TNGST Act was still in force. TNVAT Act was in the offing. The very object of introducing the concept of Input Tax Credit was to ensure that there was no effect in the form of tax burdens on the subsequent purchasers. Therefore, the Government wanted to tailor the scheme in such a way that whatever tax was collected and remitted by M/s.DELL India Pvt. Ltd. was eventually refunded fully to M/s.DELL India Pvt. Ltd.

10. Therefore, I have to necessarily reject the contention urged by the learned Special Government Pleader that the tax collected by M/s.DELL India Pvt. Ltd. itself was illegal. On the other hand, the Government Order contemplates collection of tax on the first sale by M/s.DELL India Pvt. Ltd. and remittance of collected tax amount to the Commercial Tax Department. After getting payment by the Commercial Tax Department, refund shall be fully made to M/s.DELL India Pvt. Ltd. by the Industries Department. Thus, the payment made by the petitioner to their vendor M/s.DELL India Pvt. Ltd. comprised tax component also. When once the petitioner has paid the tax, he is obviously entitled to ITC and there will be consequential benefits contemplated under the TNVAT Act.

11. There is yet another formidable point in favour of the writ petitioner. The learned counsel appearing for the writ petitioner drew my attention to the definition of "turnover" as set out in Section 2(41) of the Tamil Nadu Value Added Tax Act, 2006. The said definition reads as follows:-

> "(41) "turnover" means the aggregate amount for which goods are bought or sold, or delivered or supplied or otherwise disposed of in any of the ways referred to in clause (33), by a dealer either directly or through another, on his own account or on account of others whether for cash or for deferred payment or other valuable consideration, provided that the proceeds of the sale by a person of agricultural or horticultural produce, other than tea and rubber (natural rubber latex and all varieties and grades of raw rubber) grown within the State by himself or on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, shall be excluded from his turnover. "

12.A mere look at the explanation II(ii) to Section 2(41) of the TNVAT Act would show that any cash or other discount on the price allotted in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover. The expression employed is "shall not be". Therefore, a mere look at the tax invoice issued by M/s.DELL India Pvt. Ltd. in favour of the petitioner would show that the amount in question was given as a discount in favour of the petitioner herein. Therefore, the respondent clearly erred in including the same in the sales turnover of the petitioner herein. When the statute forbids the authority from including the discount in the sales turnover, the respondent could not have included the same. It is a clear breach of statutory mandate.

13. On both the grounds, the orders impugned in the writ petitions are quashed. The writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

Pmu

To:

1.The Assistant Commissioner(CT),
West Tower Street Circle,
Madurai.

+1 CC to M/s.A.CHANDRASESKARAN, Advocate (SR-4999[F] dated 15/02/2021)

+1 CC to M/s.GP (SR-4982[F] dated 15/02/2021)

W.P.(MD)Nos.14305 & 14306 of 2011
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GS (07.05.2021) 5P 4C