



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.20606 of 2014

and

M.P. (MD)No.1 of 2014

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M/s.Suriya Cement Agency,
Represented by its Proprietrix S.Vidya,
No.85A, SBOA First Colony,
DSP Nagar 4th Street,
Madurai-625016.

... Petitioner

-Vs-

The Assistant Commissioner (CT),
Madurai (Rural) South Assessment Circle,
Commercial Taxes Buildings,
Madurai.

... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN No.33315163910/2012-13, dated 16.10.2014 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and to direct the respondent to pass assessment order in terms of Rule 10 (6)(b)(ii)(c) of Tamil Nadu Value Added Tax, Rules 2006 after affording opportunity of being heard to the petitioner.

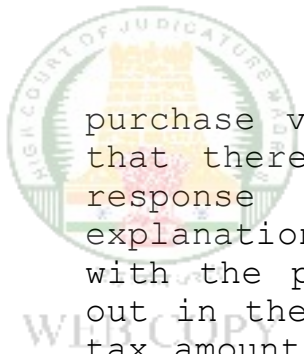
For Petitioner : M.Sudalaimuthu
for Mr.S.Karunakar

For Respondent : Mr.S.Dhayalan
Government Advocate

ORDER

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

2.The petitioner is a dealer registered with the respondent. The subject matter pertains to the assessment year 2012-13. The petitioner was assessed on a total and taxable turnover of Rs.13,07,76,666/- on deemed assessment basis under Section 22(2) of the TNVAT Act, 2006. Subsequently, the respondent issued a pre-revision notice dated 16.07.2014. In the said notice, two allegations have been made against the petitioner. The first allegation is that the petitioner had omitted to report the



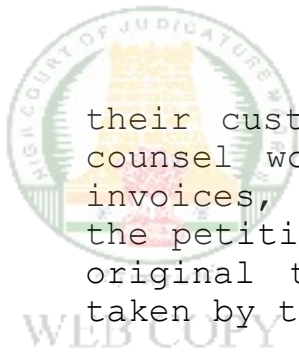
purchase value of Rs.7,39,829/-. The other major allegation is that there has been a wrong availing of input tax credit. In response to the said notice, the petitioner submitted his explanation dated 18.09.2014. The respondent was not satisfied with the petitioner's explanation and confirmed the proposal set out in the notice and directed the petitioner to pay the balance tax amount of Rs.21,02,363/- together with penalty to the tune of Rs.4,09,874/-. Challenging the same, this writ petition came to be filed.

3.The respondent has filed a detailed counter affidavit and the learned Government Advocate took me through the same. The learned Government Advocate also pointed out that this writ petition has been filed without availing alternative remedy. He therefore called upon this Court to dismiss the writ petition.

4.I carefully considered the rival contentions and went through the materials on record. As regards the allegation of suppression of the purchase value, as rightly pointed out by the petitioner's counsel, in the audit report in Form WW, the transactions in question have been clearly reflected. It is true that there was a minor omission in the return filed by the petitioner. When the petitioner in his explanation has clearly and specifically pointed out that what is alleged to be suppressed is very much reflected in the report filed in Form WW, the question of suppression will not arise at all. In the impugned order, the assessing authority has clearly stated that the so called omission was not mentioned in the Form WW report. But the petitioner is sought to be penalized only for the sole reason that the omitted figures were not mentioned in the returns.

5.I am of the view that such a narrow approach ought not to be adopted. When all the details have been fully and correctly disclosed in Form WW report, mere omission to reflect the same in the returns need not be put against the petitioner herein. But this is only a minor part of the story. The major aspect revolves around the alleged wrongful availment of input tax credit.

6.The contention of the department is that the petitioner who is a dealer in cements and who availed trade discount from the manufacturer, did not adhere to the parameters laid down in Section 19(20) of TNVAT Act, 2006 r/w Rule 10(6)(b)(ii)(c) of TNVAT Rules, 2006. In the impugned order, by way of sample, it is pointed out that the petitioner after purchasing to the tune of 200 bags of cement at the cost of Rs.66,000/-, chose to sell the same for a lesser price of Rs.64,051/-. In the impugned order, the invoice particulars have not been mentioned. But the petitioner's counsel in his typed set, has enclosed two such invoices. It is seen that the sale made by the petitioner to



their customers is earlier in point of time. The petitioner's counsel would rightly contend that by comparison of these two invoices, it would not be proper to come to the conclusion that the petitioner had disturbed the tax component on the price in the original tax invoice. I find considerable merit in the stand taken by the petitioner herein.

7.The specific stand of the petitioner is that they had scrupulously complied with the conditions laid down in the relevant statutory rules. The respondent has not come out with any convincing material to show that the tax component has been disturbed.

8.Section 19(20) of TNVAT Act, 2006, reads as follows:-

20.Not withstanding any thing 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 input tax of those goods shall be reversed.

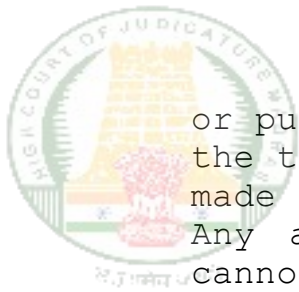
9.Rule 10(6)(b)(ii)(C) of Tamilnadu Value Added Tax Rules, 2006 as reads as follows:-

"Wherever any credit notes are to be issued for discount or sales incentives by any dealer to another dealer after issuing tax invoices, 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"

10.These provisions were recently applied by the Madras High Court in ***W.P.No.37775 of 2015 (Kun Motor Company Pvt. Ltd., Vs. The Assistant Commissioner (CT), Chennai) dated 20.01.2020.*** The learned Judge held as follows:-

"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, in W.P.No.37775 of 2015 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 W.P.No.37775 of 2015 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."

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."

11. Respectfully applying the ratio laid down above, I hold that the respondent without any basis had concluded that the petitioner has disturbed the tax component. It is certainly open to the manufacturer to reward the petitioner with trade discount and by no stretch of imagination, that can be added to the taxable turnover of the petitioner for the purpose of coming to the conclusion that the petitioner had wrongly availed ITC.

12. In the light of the above discussion, the order impugned in the writ petition stands quashed. As held in the said decisions, even though the petitioner has an alternative remedy by way of an appeal, in as much as contentious questions of fact are not involved, I choose to entertain the writ petition. In any event, the writ petition was filed way back in the year 2014 and it would not be fair on the part of the Court to relegate the petitioner to avail alternative remedy of appeal in 2021. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



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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.

To
The Assistant Commissioner (CT),
Madurai (Rural) South Assessment Circle,
Commercial Taxes Buildings,
Madurai.

+1 CC to Mr.S.KARUNAKAR, Advocate (SR-6059[F] dated 19/02/2021)

+1 CC to SPL GP (SR-6168[F] dated 19/02/2021)

W.P. (MD)No.20606 of 2014
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