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**(2015) 06 MAD CK 0271**

**Madras High Court**

**Case No:** Writ Petition Nos. 30327, 30328 of 2014, M.P. Nos. 1, 1, 2 and 2 of 2015

Tvl. Vivek Limited

APPELLANT

Vs

The Assistant Commissioner

RESPONDENT

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**Date of Decision:** June 11, 2015

**Acts Referred:**

- Tamil Nadu Value Added Tax Act, 2006 - Section 17, 22, 51

**Hon'ble Judges:** S. Vaidyanathan, J

**Bench:** Single Bench

**Advocate:** Satish Parasaran, for the Appellant; Manoharan Sundaram, AGP, Advocates for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

S. Vaidyanathan, J.

1. These writ petitions have been filed, praying for the issuance of the writ of certiorari, to call for the records in respect of the revised assessment order TIN 33530801214/ 2009-10 dated 30.09.2014 passed by the Respondent in respect of the assessment years 2009-10 and 2010-11 under the Tamil Nadu Value Added Tax Act 2006 and the consequent demand notice dated 30.09.2014 as well as the consequent notice of attachment dated 14.11.2014 both issued by the Respondent and quash the same.

2. According to the petitioner, final assessment orders dated 30.03.2012 were passed by the respondent for the years 2009-10 and 2010-11 on total taxable turnovers of Rs. 292,79,98,292/- and Rs. 278,79,12,538 and Rs. 311,54,80,356/- and Rs. 300,13,54,408/- respectively under the Tamil Nadu Value Added Tax Act, 2006 (in short the Act). Subsequently, the respondent issued notices dated 23.07.2012 and 20.09.2012, proposing to revise the above said assessments by disallowing the exemption and called for objections from the petitioner. Pursuant to the said notices, the petitioner submitted the details vide letter dated 20.08.2012, 10.10.2012

and 13.3.2013 regarding the sales return unfructified sales for the year 2009-10 and 2010-11, specifically mentioning that the petitioner could furnish further documentary proof and details if the explanation is found unsatisfactory. After receipt of the explanation, the respondent passed the impugned order stating that the details furnished by the petitioner were not acceptable and confirmed the proposal made in the notices dated 23.07.2002 and 20.09.2012 to disallow the claim of exemption of Rs. 13,66,70,858/- and 11,41,948/- respectively. The grievance of the petitioner is that before passing the impugned orders, the respondent has not provided any opportunity to the petitioner, calling for their explanation as to his unilateral conclusion that the details of sales returns and unfructified sales furnished by them were not acceptable to him. According to the petitioner, the respondent has completely ignored the undertaking given by the petitioner to produce necessary material and documentary evidence if explanation is found unsatisfactory and thereby denied the petitioner an opportunity to show cause. Thereafter, the petitioner filed Revision Petitions dated 10.11.2014 before the respondent. According to the petitioner while pending the revision, the respondent proceeded to initiate coercive action against the petitioner by issuing notices dated 14.11.2014 which were served on the petitioner on 17.11.2014, for attachment of the bank account of the petitioner. Hence the Writ Petition.

3. A common counter affidavit has been filed on behalf of the respondent, wherein it is stated that the assessment of the petitioner deemed to have been completed as per Section 22 of the Act accepting the monthly returns filed by the Assessee. On verification of the same, it was noticed that the petitioner obtained from their sellers and since huge amount was claimed as sales return, details were called for from the petitioner to verify the genuineness of the claim. Further the petitioner claimed that a sum of Rs. 34,14,896/- represents for the year 2009-10 exempted sales and not ~zero rate sales(tm). The petitioner claimed sales return but have not filed the complete details with documentary proof of sales return as per Rule 10(6)(b) of the TNVAT Rules. Therefore a notice was issued calling for objections to the petitioner. Pursuant to the same, the petitioner filed details which were only abstract and on verification of the details it was found that it only consisted break up details for the total value of sales return declared for the respective months, such as Cheque number, date, bill number, date and amount in an abstract form, region/branch-wise and month wise and no documentary evidence was filed in support of its claim of sales return as to verify the genuineness of the sales return claimed. Mere filing of break up details for the total value of the sales return or abstract are not sufficient for the claim of actual sales return. The petitioner consolidated both the claim under one heading and failed to report the details of unfructified sales within a month. In respect of unfructified sale, the petitioner ought to have preferred the claim within a month as envisaged under Rule 10(6)(b)(ii) of Tamil Nadu Value Added Tax Rules (in short, ~the Rules(tm)) and in the absence of claim within the stipulated period by way of filing return in the

subsequent months, the claim of unfructified sale is rejected. As per Section 17 of the Act, when a dealer claimed deduction, it is customary and obligatory on the part of the petitioner to furnish the details but in the present case, the petitioner failed to discharge his burden. The petitioner admitted that their unfructified sales comes to Rs. 8,39,10,338/- for the year 2009-10 and Rs. 11,00,32,734/- for the year 2010-11 respectively and as per the Rules, the claim has to be made within a period of thirty days with condition that such sales are reported in the monthly return and the petitioner has not proved that such sales are originally reported in the monthly returns and within thirty days such unfructified sales were reported and discharge their burden. However, the petitioner is having alternative remedy under Section 51 of the Act by way of a statutory appeal before the first appellate authority and instead of availing the same, the petitioner has preferred the writ petitions, which are not maintainable. With these averments, the respondent sought for dismissal of the writ petitions.

4. Mr. Satish Parasaran, learned counsel appearing for the petitioner would mainly contend that before passing the impugned orders, the respondent did not provide any opportunity to the petitioner to furnish documents or seek additional information despite the specific request made by the petitioner and thereby, violated the principles of natural justice. He would further contend that neither show cause notices nor the impugned order provide the details of income that had escaped assessment and the re-assessment is merely a re-consideration of material that has already been furnished and explained and hence, it is nothing but a change of opinion. He pointed out that an unfructified sale is not at all a sale as defined in the Act since there was no actual transfer of property in goods when the sale remains unfructified and it does not form part of the turnover of the dealer, however, erroneously the respondent has adopted the criteria for sales return as concluded sales, return of goods sold, etc., to decide the admissibility of the claim of unfructified sales. He pointed out that in respect of the amount of Rs. 8,39,10,338/- representing unfructified sales, the petitioner furnished relevant details along with their letter dated 29.8.2012 and thereby complied with the requirements of Rule 10(6)(b)(ii) in respect of unfructified sales. Therefore, the learned counsel sought for setting aside the impugned orders.

5. On the other hand, the learned counsel appearing for the respondent would contend that before passing the impugned order, the petitioner was issued revision cause notices, dated 23.7.2012 and 20.09.2012, giving an opportunity to file their objections with documentary evidence, however, the petitioner has not furnished the details of exemption with documentary proof and further, in case of unfructified sales, the petitioner ought to have reported the claim well within a period of thirty days as per Rule 10(6)(b) of the Rules, however, the petitioner has not reported the same in their subsequent monthly returns. Therefore, as the petitioner failed to comply with the provisions of the Act, recovery notice was issued after expiry of appeal time and there is no irregularity or illegality in the impugned proceedings.

Hence, the learned counsel sought for dismissal of the writ petitions.

6. Heard the learned counsel on either side and perused the entire documents available on record.

7. The fundamental taxation principle is that the turnover cannot be taxed unless the sale was completed or fructified. In the present case, the petitioner claimed that they had unfructified sales to Rs. 8,39,10,338/- and for the year 2010-11, Rs. 11,00,32,734/- and accordingly, they deducted the unfructified return turnover from the taxable turnover, stating that the basic price plus tax element was returned to the customer. On verification of the monthly returns filed by the petitioner, the department noticed that the petitioner obtained discount from their sellers and since huge amount was claimed as ~sales return(tm), details were called for from the petitioner to verify the genuineness of the claim. Since the petitioner has not submitted complete details with documentary proof of sales return, revision notices, dated 23.7.2012 and 20.9.2012 were issued inviting objections. According to the respondent, despite the same, the petitioner has not filed documentary proof to support their claim. The petitioner claimed ~sales return(tm). In this regard, Rule 10(6)(b) of the Rules is relevant and it is extracted as under:

10(6)(b). Where a dealer who sells goods after paying tax, receives back his goods, he may deduct such tax amounts paid from the tax payable in the returns of following months only when, -

(i) in respect of sales return, -

(A) the sale was included in the return and the tax paid;

(B) the goods were received back or returned within a period of six months from the date of sale;

(C) the price of the goods and the tax, if any, charged thereon were refunded in full to the buyer; and

(D) the credit note shall contain the date and serial number of the invoice on which the tax was originally charged and brought to account.

(ii) in respect of unfructified sale,-

(A) the sale was included in the return and tax paid; and

(B) the goods were received back within a period of thirty days from the date of sale.

(C) Wherever any credit notes are to be issued for discount or sales incentives by any dealer to another dealer after issuing tax invoice, 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."

8. A perusal of the above, it is quite clear that when the provision contemplates time-limit for claiming sales return or refund on unfructified sale, then necessarily the time-limit has to be adhered to while claiming the relief in the relevant assessment year. Therefore, without complying the conditions contemplated in above Rule pertaining to sales return or to unfructified sale, an assessee cannot claim exemption. In the present case, it has been clearly stated on the facts furnished by the assessee that no documentary proof was shown either for the claim of sales return or unfructified sale. In fact, though the petitioner stated that they had already submitted the details of the sales return along with their monthly returns, on verification of the same, it is found by the department that it only consists break up details for the total value of sales return declared for the respective months, such as ch.No., ch.date, bill number, date and amount in an abstract form, region/branch wise and month wise and no documentary evidence was filed in support of their claim of sales return. In fact, a perusal of the entire impugned orders, I find that the respondent has elaborately discussed each and every aspect more particularly sales returns and specifically stated that the petitioner has not discharged its burden cast upon it under Section 17 of the Act, to fulfil the following conditions to claim the exemption in respect sales returns, viz.,

i) Whether the sale was included in the return and tax paid;

ii) Whether the sales return is within the period of limitation;

iii) Whether the price of the goods and tax was refunded to the buyer;

iv) Whether the credit note contain the date and serial number of invoices in which the tax was originally charged and brought to account.

9. Therefore, having found that the petitioner has not discharged their burden by way of documentary evidence, the respondent has rightly disallowed the exemption claimed by the petitioner. Thus, I do not find any reason to interfere with the order of the respondent.

Accordingly, the Writ Petitions fail and they are dismissed. No costs. Consequently, connected MPs are closed.