

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WP(C) 6533/2008**

Reserved on: 2nd December, 2009
% Date of Decision: 29th January, 2010

L.G. ELECTRONICS Petitioner

Through: Mr. S.C. Ladi and Mr. Rajesh Jain,
Advocates.

versus

COMMISSIONER OF TRADE & TAXES Respondent

Through: Ms. Avnish Ahlawat and
Ms. Simran, Advocates.

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present writ petition assails the impugned order No.2039 dated 4th July, 2008 under Rule 29 of the Delhi Sales Tax Rules, 1975 whereby the Joint Commissioner (KCSU) has rejected the refund arising out of the assessment orders passed for the years 1997-98, 1998-99 and 1999-2000 respectively.

2. At the outset, it must be pointed out that this is the third round of litigation between the Petitioner and the Revenue arising out of the

same issue.

3. The facts as are relevant for adjudication of the present writ petition are that:-

- (a) The Petitioner is a limited company engaged in the manufacture and sale-purchase of electronic items. It has a chain of distributors and dealers through whom its goods are sold to ultimate customers. According to the Petitioner it has floated several schemes by virtue of which it offers trade discounts against the catalogue price and also cash discounts on immediate payments for the benefit of the distributors and dealers. Contracts in that behalf are entered to that effect at the time of appointment of distributors/dealers itself and the discounts are offered through credit notes issued to them. According to the Petitioner the credit notes include the tax amount.
- (b) In respect of the assessment year 1997-98 the Assessing Officer under the Delhi Sales Tax Act (in short 'DST Act') framed an assessment on 29th September, 2000, whereby the claim of the Petitioner for trade discounts, said to have been given to its distributors and dealers, was disallowed.
- (c) Aggrieved by the assessment order dated 29th September, 2000, the Petitioner preferred an appeal before the Deputy Commissioner who set aside the assessment order

and remanded the case back to the assessing authority for *de novo* adjudication vide its order dated 16th April, 2001.

(d) On 7th April, 2003 the Assessing Officer reconsidered the case of the Petitioner and for the assessment year 1997-98 he granted a refund of Rs.5,15,656/-. The Assessing Officer noted that the assessee had filed a complete set of credit notes showing credit of sales tax to the respective parties. One of the issues canvassed by the learned counsel appearing before the Assessing Officer was that the sales tax had already been returned by issuing credit notes and this was examined by the Deputy Commissioner who accepted the contention of the Petitioner. The Assessing Officer who examined the record and the facts of the case as well as the submissions made by the Petitioner allowed the claim made by the assessee. With regard to the assessment year 1998-99, the assessment of the Petitioner went through the same fate and on remand by the Deputy Commissioner, the Assessing Officer passed an order on 8th December, 2003 accepting the claim of the Petitioner and granting a refund of Rs.3,68,601/-. In respect of the assessment year 1999-2000, since the earlier appellate order was already available, the Assessing Officer considered the matter on merit and by an order dated 28th December, 2001 granted a refund of Rs.86,73,349/- to the Petitioner.

(e) In the result, therefore, with regard to all the three

assessment years, the claim of the Petitioner for allowing trade discounts in respect of the sales made to its distributors and dealers stood allowed by the Assessing Officer. Thereafter, the Petitioner filed refund claims in respect of the three assessment years with the Assessing Officer under Section 30 of the DST Act.

- (f) Instead of granting the refund claim to the Petitioner in terms of the orders passed by the Assessing Officer, the Petitioner was issued a show cause notice dated 14th June 2004 for reopening the assessment for all the three years. The Petitioner contested the notice, but in respect of 1999-2000, an order was passed on 16th July, 2004 denying to the Petitioner the benefit of trade discount and thereby denying the refund claim.
- (g) The Petitioner feeling aggrieved filed two writ petitions in this Court being Writ Petition (Civil) No. 15217/2004 and Writ Petitioner (Civil) No. 15285/2004. In these writ petitions the Petitioner challenged the reassessment order dated 16th July, 2004 passed in respect of the assessment year 1999-2000 and the show cause notices seeking to reopen the completed assessments for the year 1997-98 and 1998-99. On 22nd September, 2006, the Department, during the course of hearing of the writ petitions, informed this Court that the Commissioner of Sales Tax had taken a decision to withdraw the reassessment order

for the year 1999-2000 as well as the show cause notices for the assessment years 1997-98 and 1998-99. Thus, an order was made by this Court disposing of the petitions accordingly. After the order dated 22nd September, 2006 passed by this Court the only thing that remained to be decided was the entitlement of the Petitioner for the refund. As the time of four weeks granted by this Court to the Assistant Commissioner to pass a reasoned order on the application for refund made by the Petitioner in respect of all the three assessment years was to expire on 21st October, 2006, a notice was issued on 18th October, 2006 asking the Petitioner to show cause why refund application be not rejected. On 20th October, 2006 i.e. two days after the date of the notice issued on 18th October, 2006 the Joint Commissioner rejected the refund applications filed by the Petitioner in respect of three assessment years. On the very same day, the Joint Commissioner issued fresh notices to the Petitioner to show cause why the assessment orders passed in its favour be not revised *suo moto*. Thereafter, pursuant to the show cause notice dated 20th October, 2006 the Joint Commissioner passed an order on 7th November, 2006 *suo moto* revising the assessment orders passed in favour of the Petitioner for the three assessment years that we are concerned with and remanding the matter to the Assessing Officer for a fresh assessment.

(h) Aggrieved by this, the Petitioner filed two writ petitions. The Writ Petition(Civil) No. 17391/2006 was filed against the order dated 20th October, 2006 vide which the claim of refund was rejected by the Joint Commissioner. The second writ petition being Writ Petition(Civil) No. 17423/2006 was filed against the *suo moto* revision order passed on 7th November, 2006. Vide order dated 23rd May, 2008. Writ Petition(Civil) No. 17423/2006 came to be disposed of by this Court quashing and setting aside the *suo moto* revision order dated 7th November, 2006. As far as the Writ Petition(Civil) No. 17391/2006 relating to the refund for all the three years were concerned, the same was allowed and the matter was remitted back to the Joint Commissioner, limited only to the question whether the Petitioner had passed on the tax burden to its dealers and distributors or not. It was further held that if it was found that the Petitioner had passed on the tax burden, then on the principles of unjust enrichment the Petitioner will not be entitled to a refund for that amount. But, on the contrary, if the Petitioner had not passed on the tax burden, then in that case the Petitioner would be entitled to a refund. Quashing the order dated 20th October, 2006 this Court directed the Joint Commissioner to take a decision within six weeks limited, as aforesaid, to the question whether despite the trade discounts given by the Petitioner, it had passed on the tax burden to its

distributors and dealers or not.

- (i) Vide the impugned order dated 4th July, 2008 the Joint Commissioner has rejected the refund claims of the Petitioner.

4. On behalf of the Petitioner it was urged that the Joint Commissioner erred in not relying on the confirmation received from the dealers and distributors confirming that the latter were issued the credit notes inclusive of tax. On the other hand on behalf of the Respondent the impugned order was supported on the ground that the books of accounts for the relevant years were not available with the distributors and dealers who provided the confirmation.

5. In the present case, it is seen that the Petitioner had filed various documents which were already on record in the earlier proceedings including a Trial Balance for the year 1999-2000 along with the auditor's report, statement of trade discounts, copies of trade discounts circulars, sample of general vouchers and ledger accounts along with copies of credit notes. In fact, in the order of this Court dated 23rd May, 2008 it had been noticed by the Division Bench that "the Assessing Officer noted that the assessee had filed a complete set of credit notes showing credit of sales tax to the respective parties. One of the issues canvassed by the learned counsel appearing before the Assessing Officer was that the sales tax had already been returned by issuing credit notes and this was examined by the Deputy Commissioner/Appellate Authority who accepted the contention of the Petitioner. Based on the facts of the case as well as the submissions

made by the Petitioner, the Assessing Officer examined the record and allowed the claim made by the assessee". Thus, it had never been the case of the Respondent that the Petitioner had not issued credit notes. In fact, these credit notes were the very foundation for accepting the discounts given to the distributors, as a result of which the refund accrued to the Petitioner. Even otherwise, the mandate given to the Joint Commissioner was limited to the extent of verifying whether the Petitioner had passed on the sales tax burden to the distributors. The Joint Commissioner misdirected himself by going into the veracity of the credit notes and re-examining the discounts scheme afresh, which action was wholly unwarranted.

6. It is also seen in the present case that the Petitioner has annexed the credit notes and all the other relevant documents along with the writ petition wherein it is clearly stated on behalf of the distributors that "this credit note is inclusive of sales tax". As a matter of fact, in the impugned order itself it has been noticed that the Respondent had carried out a verification of the distributors in whose favour the credit notes had been issued. Thus, the only ground for disbelieving distributors in whose favour the credit notes have been issued by the Petitioner was the fact that the said distributors could not produce any documentary evidence at the time of the verification. However, as aforesaid, the Petitioner itself had filed various documents including the credit notes and ledger accounts to show that the burden of the sales tax had not been passed on to the distributors and that these ledger accounts, on their perusal, clearly depict that the credit notes were issued to the distributors inclusive of

the sales tax. In the impugned order, rejecting the claim for refund, the Joint Commissioner has been critical of the credit notes and the manner in which they have been prepared and purely on this basis has come to the conclusion that the burden of sales tax was passed on by the Petitioner to its dealers and distributors. It is further noticed in the impugned order that it has been repeatedly stated that on 27th June, 2008 the Petitioner was directed that the copies of the credit notes should be got verified by the stockists as a proof that the tax burden had not been passed on to them. However, a reading of the said order annexed at page 146 of the petition does not bear out the assertion that such a direction was ever given to the Petitioner. All that can be discerned from the said order is that the Joint Commissioner recorded that the copies of the credit notes needed verification. Even otherwise, the fact that the Joint Commissioner himself got the verification done from some of the distributors, belies the assertion in the impugned order that the Petitioner had been directed to obtain confirmation and verification of the credit notes from the distributors. In this behalf it is also observed that the Joint Commissioner cryptically relied on the verification undertaken by the Revenue, without confronting the Petitioner with the same and without affording an opportunity to the Petitioner to contradict the verification. The Revenue, has furthermore, neither produced nor referred to the said verification before this Court leading to the inference that the confirmations received from those distributors establish that the tax burden had not been passed on by the Petitioner to the distributors. Therefore, in our opinion when the authenticity of

the credit notes had been admitted by the Respondent all along and the factum of those credit notes being inclusive of sales tax had been confirmed by the distributors and supported by the documents furnished before the Respondent by the Petitioner, the Joint Commissioner totally misdirected himself in reviewing the entire case including the authenticity of the credit notes and completely exceeded the limited direction given to it by the order of this court dated 23rd May, 2008.

7. Predicated on the documents filed before the Respondent and annexed to this writ petition, we are satisfied that the Petitioner had not passed on the burden of sales tax to the distributors and dealers and is, as such, entitled to a refund of the same. In the result, the impugned order dated 4th July 2008 is quashed, the writ petition is allowed and the Respondent is directed to refund the amounts in respect of the assessment years 1997-98, 1998-99 and 1999-2000 along with interest thereon in accordance with law to the Petitioner within a period of four weeks from the date of this order.

SIDDHARTH MRIDUL, J.

A.K. SIKRI, J.

JANUARY 29, 2010

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