In the Gujarat Value Added Tax Tribunal
at Ahmedabad

Hon'ble Mr. Justice K.A.Puj (Retd.), President
Mr. N.C.Andharia, Member

REVISIONAL APPLICATION NO. 124 OF 2013

M/S MAHAVIR TRADERS **...Applicant**

v/s

The State of Gujarat ....Opponent

Shri Apurva Mehta, the learned advocate for the applicant
Shri R.S.Parmar, the learned govt. representative for the opponent

Date: 08.10.2014

JUDGEMENT

Per: Hon'ble Mr.Justice K.A.Puj (Retd.). President

The applicant has filed this revision application against the order dated 20/9/13 passed by the learned Deputy Commissioner of Commercial Tax (Audit), Div.7, Rajkot for the assessment period 2006-07, whereby he has revised assessment order passed by the assessing officer and raised the demand of Rs.4,83,898/- which inter alia includes the tax demand of Rs.1,76,388/-. The applicant has paid 20% of the tax amount i.e. Rs.23,500/- on 9/10/13 and challan to that effect was produced on the record of this revision application. This revision application has come up for preliminary hearing before this Tribunal on 15/11/13 and after hearing Mr. R.R.Nakar, the learned STP appearing for the applicant and Mr. Y.A.Radhanpura, the learned government representative appearing for the opponent, this Tribunal has passed an order directing the applicant to make the payment of Rs.12,000/- by way of pre-deposit. For compliance of the said order

http://taxguru.in/

and for production of challan, the hearing of this revision application was adjourned to 16/12/13. On 16/12/13, the applicant has produced the challan showing the payment as directed by this Tribunal. Considering the issue involved in this revision application, this Tribunal has admitted the said revision application and since the applicant has made the payment as directed by this Tribunal, the stay was granted till final disposal of this revision application. This Revision application was thereafter fixed for regular hearing on 8/10/14.

2. It is the case of the applicant that the applicant was doing the business of sales and purchase of coal at Jamnagar. The applicant was duly registered under the Gujarat VAT Act. The applicant has been maintaining regular books of accounts and the said books of accounts were audited by the Chartered Accountant. The assessment for the year 2006-07 was completed by the assessing officer on 11/11/09. While passing the assessment order, the assessing officer has accepted the amount of tax credit shown by the applicant in the VAT Audit Report and no additional demand was raised against the applicant. As a matter of fact, the excess input tax credit of Rs.1,24,223/- was allowed to be carried forward to the next period. Subsequently, A.G.Audit party has raised an objection and based on the said audit objection, the assessing officer has issued notice in form No. 401 for reassessment on 17/9/12 pointing out that the input tax credit was wrongly allowed in the original assessment order. The applicant has given its detailed reply on 29/9/10 and it was informed that it was only due to mistake of accountant, four purchase bills were not included in the list of total purchase against tax invoice.

http://taxguru.in/

However, the said purchases were duly shown in the books of accounts. The applicant has not made claim of the said input tax credit in the periodical returns but when the said mistake was brought to the notice of the applicant, at the time of preparation of VAT Audit Report, the said four bills were included in the tax audit report. Based on this audited report, the assessing officer has completed the assessment. Subsequently, the Deputy Commissioner of Commercial Tax (Audit) Div.7, Rajkot has issued the notice on 18/7/12 in form No. 503 proposing to revise the assessment order. The applicant has raised an objection against the assumption of jurisdiction by the learned Deputy Commissioner. The learned Deputy Commissioner has however passed revisional order overruling the objections raised by the applicant and raised demand of Rs.4,83,898/-.

3. Mr. Apurva Mehta, the learned advocate appearing for the applicant has submitted that the learned Deputy Commissioner is not justified in revising the assessment order merely on the basis of A.G.Audit Report. He has further submitted that the applicant has not claimed input tax credit in respect of four bills in the periodical returns. He has further submitted that in the VAT Audit Report the input tax credit in respect of four bills were duly shown by the vendors in their respective returns and also have paid tax to the State Government, collected from the applicant. He has further submitted that simply because the name of the purchaser or his registration number is not shown in the returns filed by the vendor, the input tax credit cannot be disallowed in the case of purchaser. For this purpose, he has relied on the decision of this Tribunal in the case of Industrial Associates

GUJARAT VALUE ADDED TAX TRIBUNAL * S.G. AHMEDABAD *

http://taxguru.in/

(SA No. 733 of 2011). He has further submitted that if the input tax credit is allowed to be carried forward to the next period and if any demand is raised against the applicant in that case, said excess input tax credit should have been first adjusted against the demand of current year. He has, therefore, submitted that the amount of Rs.1,41,227/- was wrongly allowed to be carried forward to the next period.

4. Demand in the current year was raised at Rs.1,13,910/-, if this excess input tax credit was allowed against the current year's demand, there would not have any liability on the part of the applicant. He has further submitted that in the VAT Audit Report the Chartered Accountant has given the correct calculation of sales, purchases, tax thereon and carried forward of credit. As per the VAT Audit Report, the total purchases are to the tune of Rs.9,04,40,867/- as against Rs.8,74,83,825/- shown in the annual return. Thus, there was difference of Rs.29,57,042/-. The input tax credit as per the VAT Audit Report was claimed at Rs.36,05,121/- whereas tax credit has been claimed as per annual returns was to the tune of Rs.34,84,124/-. Thus difference in the input tax credit is to the tune of Rs. 1,20,997/-. The net refund as per VAT Report was to the tune of Rs.1,41,227/. The applicant has therefore made the claim of additional refund of Rs.1,30,380/-. He has therefore submitted that the applicant was not liable to pay any tax.

5. Mr. Mehta has further submitted that the learned Deputy Commissioner was of the view that the objection raised by the AG Audit was not just and proper and hence he has recommended the AG Audit party vide his communication dated

http://taxguru.in/

26/6/13 to go through the revisional proceedings. He has produced the copy of the said communication on the record of this revision application. He has, therefore, submitted that once the learned Deputy Commissioner has given an opinion not to revise the assessment order for the reasons stated therein, the order passed by him at the behest of superior authority is not at all justified and hence that order deserves to be quashed and set aside. For this purpose, he relied on the decision of Hon'ble Gujarat High Court in the case of Cadila Healthcare Ltd. vs Assistant Commissioner of Income-tax in Civil Application No. 15566 of 2011 decided on 14/12/2011. It is observed by the Hon'ble Gujarat High Court in its decision that it is well settled that it is only the assessing officer whose opinion with respect to the income escaping assessment would be relevant for the purpose of reopening of closed assessment. If the audit party brings certain aspects to the notice of the assessing officer and thereupon, the assessing officer forms his own belief, it may still be a valid basis for reopening assessment. However, in the other line of judgement it has clearly been held that mere opinion of the audit party cannot form the basis for the assessing officer to reopen the closed assessment and that too beyond four years from the end of relevant assessment year. He has submitted that what is applicable to the reopening of the assessment is equally applicable to the revision of the assessment. He has also relied on the recent decision of the Hon'ble Gujarat High Court in the case of N.K.Roadways P. Ltd. vs Income-tax Officer (2014) 362 ITR 522 (Guj) wherein while allowing the petition, the Hon'ble Gujarat High Court has held that the assessing officer had not only accepted the objections

http://taxguru.in/

raised by the audit party but after deliberating over the issue raised, preferred to adhere to earlier version that the income which never materialized cannot be taxed and such a situation was duly answered in the decisions of the Supreme Court..... Any action of reopening solely at the behest of objection rised by audit party without any independent belief while recording the reasons would make the very assumption of jurisdiction vulnerable. The logical decision of initiating proceedings of reassessment in the form of reason to believe has to be directly and invariably of that of the assessing officer. The notice for reopening had been issued by the assessing officer at the behest of the objection raised by the audit party and since there was no belief on the part of the assessing officer in recording the reasons the assumption of jurisdiction itself was not sustainable.

6. Mr. Mehta has further submitted that the learned Deputy Commissioner while revising the assessment order has also levied penalty, however, no notice in form No. 309 was given before levying such penalty. He has, therefore, submitted that the penalty levied by the learned Deputy Commissioner in revisional order is absolutely illegal and deserves to be deleted. In support of his averments he relied on the decision of this Tribunal in the case of M/s Shakti Containers vs State of Gujarat 2012 GSTB Part II 585. He has also submitted that penalty cannot be levied for the first time in revisional order and for this purpose, he relied on the decision of this Tribunal in the case of Kunal Structures P. Ltd. vs State of Gujarat.

GUJARAT VALUE ADDED TAX TRIBUNAL S.G. AHMEDABAD

http://taxguru.in/

7. Based on the aforesaid submissions and the facts of the case, Mr. Mehta has submitted that the revisional order passed by the learned Deputy Commissioner is absolutely unjustified, illegal and hence deserves to be set aside.

8. Mr. R.S.Parmar, the learned government representative appearing for the opponent, on the other hand has relied on the order passed by the learned Deputy Commissioner. He has further submitted that the applicant has not shown its purchases in annual return and no tax credit was claimed simply because, in the VAT Audit Report, the said purchases were shown and as per the advise given by the VAT Auditor, the applicant is not entitled to claim input tax credit. He has further submitted that the VAT Audit party has rightly pointed out that input tax credit allowed by the department is not stipulated by the either of the revised returns in form 201 with details or of 201 B within prescribed time or by any other evidences which are required by allowing input tax credit. According to the AG Audit the irregular assessment resulted into irregular grant of ITC of Rs.1,16,210/-, therefore, the penalty is leviable at 200% u/s 12(7) of the Act. He has, therefore, submitted that the revisional authority has rightly passed the order which is required to be confirmed.

9. We have considered rival submissions and the facts of the case, we have also gone through the orders passed by the learned Deputy Commissioner as well as the documents produced on record. We find sufficient force in the arguments and submissions made by Mr. Mehta. There is no denial of the fact that the applicant has made the purchases of disputed goods from BSL Coke Pvt. Ltd. These

GUJARAT VALUE ADDED TAX TRIBUNAL AHMEDABAD

http://taxguru.in/

purchases were left out through oversight in the returns filed for the period Feb. 2006 as well as in the annual return. However in the audit report submitted by the chartered accountant these details were duly included. The vendor has shown its sale in its returns and the tax collected from the applicant was also paid. The relevant documents of the vendors are also placed on record. Because of the mistake committed by the applicant, no revenue loss is caused to the State Exchequer. The applicant therefore deserves to be succeeded on merits. Even the legal submissions made by Mr. Mehta also support the case of the applicant. The revisional proceedings were initiated on the basis of AG Audit party. The learned Deputy Commissioner was not in agreement with the proposal made by audit proceedings. He has, therefore, recommended to drop the proceedings vide his communication dated 26/6/13. The learned Deputy Commissioner was however compelled to pass the revisional order at the behest of AG Audit party and the same is not permissible as per the settled legal position discussed as above. Even on this ground, the revisional order passed by the learned Deputy Commissioner deserves to be set aside. Apart from that the penalty levied by the learned Deputy Commissioner for the first time in the revisional order and that too without issuance of notice in form no. 309 is also not justified. Considering the entire facts and circumstances of the case, we are of the view that that the order passed by the learned Deputy Commissioner is not justified on any count and hence it is required to be quashed and set aside.

10. We, therefore, pass the following order;

http://taxguru.in/

ORDER

This revisional application is hereby allowed. The order passed by the learned Deputy Commissioner on 19/9/13 revising the assessment order and raising demand of Rs.4,83,898/- is hereby quashed and set aside for the reasons stated herein above.

There shall be no order as to cost.

Pronounced in open court on this 8th day of October, 2014.

Sd/-
(Mr. Justice K.A.Puj)
President

Sd/-
(Mr.N.C.Andharia)
Member

rpp

GUJARAT VALUE ADDED TAX TRIBUNAL

TRUE COPY
Registrar
GUJARAT VALUE ADDED TAX TRIBUNAL
Ahmedabad

http://taxguru.in/