

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 30.07.2010

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WP (C) 11932/2009

M/S MITSUBISHI CORPORATION INDIA P. LTD ... Petitioner

- versus -

THE VALUE ADDED TAX OFFICER & ANR ... Respondent

Advocates who appeared in this case:-

For the Petitioner : Mr Joseph Vellapally, Sr Advocate with Mr Randhir Chawla
and Ms Renu Sehgal
For the Respondent : Mr H.L. Taneja

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

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 Digest ? YES

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner has prayed for, *inter alia*, the issuance of a writ of certiorari or any other writ, order or direction quashing the notices of default payment of taxes and default assessment of penalties for the financial year 2007-08 (April 2007 to March 2008). The said notices and default assessment of penalties have been annexed as Annexures B (Collectively) and C (Collectively) alongwith the writ petition. The petitioner has also prayed for the issuance of a writ of certiorari or any other writ, order or direction quashing the Additional Commissioner's order dated 09.10.2009

which confirmed the Value Added Tax Officer's order with regard to default assessment of taxes.

2. Initially, when the writ petition was filed, the second prayer was not sought because that stage had not been reached. The petitioner had approached this court immediately on the issuance of the notices of default payment of taxes and default assessment of penalties. Thereafter, subsequent to directions of this court, the petitioner filed its objections before the Additional Commissioner in terms of the provisions of Section 74 of the Delhi Value Added Tax Act, 2004. By virtue of the order dated 09.10.2009, the Additional Commissioner rejected the objections of the petitioner and confirmed the Value Added Tax Officer's earlier orders. Hence, the second prayer was made in the amended writ petition.

3. Before us, originally, the plea taken by Mr Vellapally, the learned senior counsel for the petitioner, was two-fold. In the first place, he submitted that the Value Added Tax Officer as well as the Additional Commissioner in their orders have clearly held that the sales made by the petitioner to its purchasers in Andhra Pradesh, Haryana and Maharashtra were in the nature of sales which fell under Section 3(a) of the Central Sales Tax Act, 1956 (hereinafter referred to as 'the CST Act'). However, at the same time, the Value Added Tax Officer in Delhi, as also the Additional Commissioner in Delhi, rejected the petitioner's claim for exemption under Section 6(2) of the CST Act. The plea taken by the learned counsel for the petitioner was that once it is decided that the sale was one which fell under

Section 3(a) of the CST Act, Delhi State would have no jurisdiction in the matter. Therefore, on this ground alone, the orders passed by the Valued Added Tax Officer as also the Additional Commissioner ought to have been quashed. The second point urged by the learned counsel for the petitioner was that in the event the sales made by the petitioner to its buyers in Andhra Pradesh, Haryana and Maharashtra are regarded as sales falling under Section 3(b) of the CST Act, then it would be entitled to exemption provided the conditions stipulated in Section 6(2) of the said Act are fulfilled. He further submitted that the Additional Commissioner in his order dated 09.10.2009, without going into the objections with regard to jurisdiction, has disallowed the petitioner's claim for exemption under Section 6(2) merely on the ground that the first sale, which was made between the seller in West Bengal and the petitioner, was exempt. According to the Additional Commissioner, since the first sale was exempted, the second sale made by the petitioner to its buyers in Andhra Pradesh, Haryana and Maharashtra would have to suffer taxation.

4. Mr Taneja, appearing on behalf of the respondents, submitted that the whole object and purpose of Section 6(2) was to prevent the effect of cascading. According to him, this aspect has been recognized by the Supreme Court in the case of **A & G Projects and Technologies Limited v. State of Karnataka: 2009 (2) SCC 326**, in view of the following observations made by the Supreme Court in the said decision:-

“16. Analysing Section 6(2), it is clear that sub-section (2) has been introduced in Section 6 in order to avoid cascading effect of multiple taxation. A subsequent

sale falling under sub-section (2), which satisfies the conditions mentioned in the proviso thereto, is exempt from tax as the first sale has been subjected to tax under sub-section (1) of Section 6 of the CST Act, 1956. Thus, in order to attract Section 6(2), it is essential that the sale concerned must be a subsequent inter-State sale effected by transfer of documents of title to the goods during the movement of the goods from one State to another and it must be preceded by a prior inter-State sale. It is only then that Section 6(2) may be attracted in order to make such subsequent sale exempt from levy of sales tax. However, the proviso to sub-section (2) of Section 6 prescribes further conditions and it is only on fulfillment of those conditions that the subsequent sale stands exempted. If those conditions are not satisfied, then notwithstanding the fact that the sale is a subsequent sale, the exemption would not be admissible to such subsequent sales. This is the scheme of Section 6 of the CST Act, 1956.”

5. Mr Taneja also placed reliance on a decision of the High Court of Andhra Pradesh in the case of **Jadhavjee Laljee v. State of Andhra Pradesh: 1989 (74) STC 201 (DB)** to submit that where the first sale is exempted, the second sale cannot be exempted under Section 6(2) of the CST Act.

6. During the course of arguments, we had put a pointed question to Mr Taneja as to whether the second sales made by the petitioner to its buyers in Andhra Pradesh, Haryana and Maharashtra were in the category of sales falling under Section 3(a) or 3(b) of the CST Act. He answered categorically that the sales in question fell under Section 3(b). The petitioner had also claimed the sales to be falling under Section 3(b) of the CST Act. Mr Vellapally had only raised the issue of Section 3(a) because the Value Added Tax Officer had pointedly held in his order that the sale fell under Section 3(a) and not under Section 3(b). Anyhow, the result of

this discussion is that we need not examine the issue with regard to jurisdiction because that would arise only if we found that the sales were of a nature which fell under Section 3(a) of the CST Act. Since the counsel for the parties are agreed and we also feel that the second sales fall within Section 3(b) of the CST Act, we need not examine the question of jurisdiction and we ought to only focus on the question of exemption under Section 6(2) of the CST Act.

7. Section 6(2) of the CST Act reads as under:-

“6. Liability to tax on inter-State sales.—

- (1) xxxxx xxxxx xxxxx xxxxx
- (2) Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act:

Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,—

- a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and
- b) if the subsequent sale is made to a registered dealer, a declaration referred to in sub-section (4) of section 8:

Provided further that it shall not be necessary to furnish the declaration referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if—,

(a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent. or such reduced rate as may be notified by the Central Government, by notification in the Official Gazette, under sub-section (1) of section 8 (whether called a tax or fee or by any other name); and

(b) The dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in this sub-section.”

8. A plain reading of Section 6(2) indicates that, first of all, it is a non-obstante provision inasmuch as it begins with the words “notwithstanding anything contained in sub-section (1) or sub-section (1A)...” Secondly, it deals with a situation where the sale of goods in the course of inter-State trade falls either under Section 3(a) or 3(b) because the provision uses the words “where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from one State to another or has been affected by the transfer of documents of title to such goods during their movement from one State to another...” Thus, the first sale could either be a sale under Section 3(a) or a sale under Section 3(b). The subsequent sale has a reference only to one which is made during such movement affected by a transfer of documents of title to such goods to a registered dealer. In other words, the second or subsequent sale has to be one which falls under Section 3(b) of the CST Act. The further condition is that the sale must be to a registered dealer and that the goods are of the description referred to in Section 8(3) of the CST Act. There is no dispute that the goods in question fall within the description of

the goods referred to in Section 8(3) of the CST Act. Thus, the primary conditions stipulated within the main part of Section 6(2) stand satisfied insofar as the present case is concerned. However, there are two provisos appended to Section 6(2) of the CST Act. We are not concerned with the second proviso. It is the first proviso, however, which is applicable. This proviso requires that in addition to the condition stipulated in the main provision, a certificate should be submitted in the prescribed form, manner and time which shall be obtained from the registered dealer from whom the goods were purchased. Essentially, this refers to the E-1 form, which is to be supplied by the West Bengal supplier to the petitioner. The second condition required under the first proviso is that a declaration should also be obtained from the registered dealer who is the buyer in the second sale in terms of Section 8(4) of the CST Act. This has reference to what is known as a 'C-Form'. Thus, the only conditions that are discernible from Section 6(2) are that:-

- i) The first sale could be either a Section 3(a) or a Section 3(b) sale;
- ii) The second or subsequent sale has to be a Section 3(b) sale;
- iii) The subsequent sale has to be to a registered dealer;
- iv) The goods should be of a description referred to in Section 8(3) of the CST Act;
- v) The E-1 Form is to be furnished by the petitioner; and
- vi) The C-Form obtained from the purchasing registered dealer has also to be furnished by the petitioner.

In the present case, apart from these conditions, there are no other conditions which are discernible from a plain reading of the provisions of Section 6(2).

9. We now come to the argument raised by Mr Taneja that the purpose of introduction of Section 6(2) of the CST Act was to avoid the cascading effect of multiple taxation and that where the first sale is exempted, the second sale cannot be exempted even if the conditions under Section 6(2) are satisfied. He had placed reliance for this proposition, first of all, on the Supreme Court decision in the case of *A & G Projects and Technologies Limited (supra)* and, secondly, on the Andhra Pradesh High Court decision in the case of *Jadhavjee Laljee (supra)*. We have already extracted the relevant portion of the Supreme Court decision wherein the Supreme Court observed that the purpose behind Section 6(2) was to avoid the cascading effect of multiple taxation. A reading of the said portion of the Supreme Court decision only indicates that where the first sale is taxed, the second sale would be exempted because of the object of avoiding the cascading effect. However, the Supreme Court decision cannot be understood to mean that where the first sale is exempted, the second sale must be taxed even though the conditions under Section 6(2) for exemption stand satisfied. The decision of the Andhra Pradesh High Court in the case of *Jadhavjee Laljee (supra)* was on a different set of circumstances. There the question arose as to whether the petitioner therein would be entitled to exemption under Section 6(2) without complying with the requirement of furnishing the Form E-1 and Form-C as stipulated under the said provision,

in case the first sale was exempted from sales tax. The argument which was raised on the part of the petitioner therein was that since the first sale was exempted, there was no necessity to furnish Form E-1 or Form-C. This argument was repelled and it was held that the Parliament wanted to tax the second and subsequent sales, if they did not fall within Section 6(2), even where the first sale of such goods was exempted by virtue of Section 8(2A). The ratio of the said decision, to our minds, is that the conditions of Section 6(2) have to be fulfilled before a dealer can claim exemption under the said provision, irrespective of the fact as to whether the first sale was exempted or not.

10. Therefore, we do not find ourselves in agreement with the submissions made by Mr Taneja that where the first sale is exempted, subsequent sales would automatically have to be taxed irrespective of the fact that the second sale fully complies with the conditions stipulated under Section 6(2) of the said Act.

11. We are of the view that when the conditions specified in Section 6(2), whether in the main provision or in the provisos, are all satisfied, the dealer would be entitled to exemption. No provision has been brought to our notice which indicates or suggests that the exemption under Section 6(2) in respect of a subsequent sale cannot be granted where the first sale has had the benefit of an exemption.

12. Since the impugned orders have not examined the question of availability of exemption to the petitioner in terms of the conditions

specified in Section 6(2) of the CST Act and had rejected the petitioner's claim merely on the ground that since the first sale was exempted, the second and subsequent sale cannot be exempted from the CST Act, we find that the right course to follow would be to set aside the impugned assessment orders as well as the penalty orders and remand the matter to the Value Added Tax Officer to determine as to whether the conditions specified in Section 6(2) of the CST Act have been satisfied by the petitioner or not for the purposes of deciding as to whether the petitioner is or is not entitled to the grant of exemption. It is ordered accordingly. The petitioner would be entitled to file any further documents it wishes to rely upon within a period of four weeks. Thereafter, the Value Added Tax Officer shall pass the appropriate orders within two months. The writ petition stands disposed of. The parties are left to bear their respective costs.

BADAR DURREZ AHMED, J

V.K. JAIN, J

July 30, 2010

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