IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2015

CORAM

The Hon'ble MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The Hon'ble MR.JUSTICE T.S.SIVAGNANAM

W.A.No.1181 of 2011

1.The Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai.

2.The Commercial Tax Officer,
Choolai Assessment Circle, Chennai-112... Appellants(Respondents)

-vs-

M/s.Sundek India Ltd.,
Rep. by its Accounts Executive,
G.Gnanapiran. .. Respondent(Petitioner)

Appeal filed under Clause 15 of the Letters Patent, against the order dated 17.07.2009 passed in W.P.No.19331 of 2008 on the file of this Court.

Writ Petition filed under Article 226 of the Constitution of India 226 of the Constitution of India to writ of Certiorari to call for the Records in TNGST No.0500592/2002-2003 dated 17.6.2008 on the file of the Second Respondent and quash the same.

For Appellants : Mr.V.Haribabu
Addl. Govt. Pleader.
For Respondent : No appearance

J U D G M E N T

(Judgment of the Court was delivered by T.S.Sivagnanam, J.)

This appeal by the Commercial Taxes Department is directed against the common order dated 17.07.2009 in a batch of writ petitions. However, this appeal is confined only to the order passed in W.P.No.19331 of 2008. On a query posed to the learned Special Government Pleader appearing for the appellants as to whether the department has preferred appeals against the orders passed in other writ petitions, it is submitted that in some of the cases, appeals have been preferred by the department and those appeals are yet to be numbered. The numbers of those appeals have not been placed before us and therefore, we are inclined to conclude that the order passed in the other writ petitions which are covered in the common order dated 17.07.2009 would bind the department, as a consequence of which, the appellants would not be justified in prosecuting this appeal.

2.That apart, though the Division Bench ordered notice to the respondent / assessee in this appeal by order dated 17.08.2011, till date no steps have been taken by the appellants to serve the respondent / assessee and the office report states that batta with petition is due. Nevertheless, we heard the learned Special Government Pleader on the merits of the matter.

3.The writ petition was filed by the respondent / assessee challenging the notice issued by the second appellant dated 17.06.2008 proposing to reopen the assessment of the total and taxable turnover of the respondent / assessee for the year 2002-2003 under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as 'the TNGST Act'). The respondent / assessee is a dealer in paper based decorative laminated sheets, which are received from other States and subjected to payment of tax at the point of first sale in the State. The product dealt with by the assessee is made up of paper and was being treated as paper based products. The first appellant issued a clarification under Section 28A of the TNGST Act with regard to rate of tax on paper based decorative laminated sheets clarifying that the product are taxable at 16% under Entry 8 (ii), Part-E of the First Schedule of the TNGST Act. The assessee contended that the actual rate of tax on such goods is only 10% and thus, sought for review of the clarification. The first appellant, on considering the review petition, issued a further clarification in Clarification No.55/2006 on 23.03.2006 stating that they are taxable at 10% as the goods fall under Entry No.22 (iv), Part-C of the First Schedule of the TNGST Act. This clarification was pursuant to an order passed by the Tamil Nadu Taxation Special Tribunal in O.P.No.120 of 2006 dated 12.04.1996. Based on the said decision of the Tribunal, the assessments were made by the Assessing Officers for all the years and they had collected the tax at 10%.

4.While so, the respondent / assessee received a notice from the Assessing Officer proposing to reopen the completed assessment and to re-assess the sales turnover on paper based decorative laminated sheets at 16%. The respondent / assessee approached the Court on receipt of such notice. There were other cases where pursuant to such notices for reopening, revision of assessment was made and orders were passed and those orders were also subject matter of challenge in other writ petitions. All the writ petitions were tagged together and heard.

5.In cases like that of the respondent / assessee where the show cause notices to reopen the assessment were challenged, it was contended that there is no purpose in submitting a reply to the show cause notices proposing to reopening or filing appeals in cases where revised assessment orders were passed, since the reason for reopening the assessment by the Assessing Officer was based on the clarification issued by the first appellant, which is binding on the Assessing Officer. Thus, they contended that no useful purpose would be served by submitting a reply to the show cause notice proposing reopening of the assessment, since the clarification being issued by the Head of Department would undoubtedly bind the Assessing Officer, an officer subordinate to the first appellant. Thus, the validity of the clarification issued by the first appellant was subject matter of consideration in the batch of writ petitions.

6.It was argued by the respondent assessee that their assessments having been finalised pursuant to the finding recorded by the Tamil Nadu Taxation Special Tribunal, the first appellant was not empowered to take a different view particularly when the assessments were completed and tax at the rate of 10% was paid by the assessee. Further, it was contended that even assuming the clarification issued by the first appellant is valid, the same cannot be applied retrospectively.

7.The appellants resisted the contention raised by the respondent / assessee by contending that the Hon'ble Supreme Court having declared the law on the subject giving interpretation with regard to paper based laminated sheet, though under the entries contained in the Central Excise Tariff, 1985, the product being the same, the clarification issued by the first appellant stating that the product is liable to be taxed at 16% is valid.

8.After considering the submissions made on either side, the Writ Court proceeded to consider the relevant entry under the TNGST Act, namely, Entry No.22 (iv) of Part C and Entry No.8 (ii) of Part E and pointed out that the first appellant issued the clarification dated 07.04.2007 by relying upon the judgment of the Hon'ble Supreme Court, however, before issuing the said clarification, no notice was issued to the assessees and a writ petition was filed in W.P.No.16867 of 2007 contending that when the earlier clarification directing the payment of tax at 16% was cancelled, opportunity of hearing was given to the assessee and while cancelling the same and enhancing the rate of tax to 16%, no notice was issued. This submission was accepted and the said writ petition was allowed and the clarification dated 07.04.2007 was set aside by order dated 29.01.2008. It is, thereafter, the second clarification was issued on 30.05.2008 reiterating the earlier clarification and stating that the said product is taxable at 16% under Entry 8 (ii) of Part-E of the First Schedule and if the product is imported, it is taxable at 20% under Entry 9 of Eleventh Schedule.

9.The question which arose for consideration in the batch of cases was whether the interpretation given by the Hon'ble Supreme Court with respect to entry made in the Central Excise Tariff, 1985, with regard to paper based decorative laminated sheets can be relied on by the first appellant to levy and collect tax under the TNGST Act, which is a separate enactment passed by the State legislature. The Writ Court took note of a decision of the Division Bench of this Court in the case of Associated Agencies vs. State of Tamil Nadu, reported in (1993) 89 STC 447, wherein a similar issue was considered with regard to 'Pesticides' and 'Insecticides', which were defined under Section 3(e) of the Insecticides Act, 1968 (Central Act), wherein the Division Bench took note of the fact that the Insecticide Act, 1968, defined fungicides and weedicides to be included in the expression 'pesticides' and held that the legislature is presumed to be aware of the need of the people and while classifying the entries in a particular schedule, if it chose not to include certain commodities in the first schedule, its intention is obvious that it did not wish to extend the benefit of single point taxation in respect of those commodities.

10.The Writ Court also took note of the decision of the Bombay High Court in the case of Neoluxe India Private Limited and Anr. vs. Commissioner of Sales Tax, Vikrikar Bhavan, Bombay and Anr., reported in (2008) 13 VST 157 (Bom) wherein the issue which was considered was whether the decision rendered under the Central Excise Act and Central Excise Tariff has relevance in interpreting the entry relating to plastic laminates under the Bombay Sales Tax Act and it was held that the decision rendered under the Central Excise Act has no relevance in interpreting the words ''plastic laminates'' as contained in the Bombay Sales Tax Act. Reliance was also placed on the decision of the Division Bench of this Court in the case of State of Tamil Nadu vs. Hajee P.Syed Mohammed (Decd) and Anr., reported in (1993) 91 STC 195, which also considered a similar issue with regard to description of paper as contained in entry 117 of the First Schedule to the TNGST Act and it was held that it is not only all comprehensive, but includes paper of all sorts and all kinds of paper even other than those illustrated or enumerated in the entry.

11.Further, the contention of the respondent / assessee was that the Tamil Nadu Taxation Special Tribunal having considered the issue with regard to taxability of paper based laminated sheets and the assessment having been completed and the tax at 10% was collected, based on the decision of the Special Tribunal, the question of reopening the same does not arise. It was further pointed out that the entry contained in the TNGST Act has not been amended after the interpretation given by the Special Tribunal and the circular issued by the first appellant cannot be sustained and the department was not justified in reopening the assessments already made and tax having been collected.

12.By referring to the decisions of the Hon'ble Supreme Court in the case of Government of India vs. Indian Tobacco Association, reported in (2005) 187 ELT 162 (SC), Commissioner of Central Excise, Pune vs. Pudumjee Pulp & Paper Mills Ltd., reported in (2006) 198 ELT 330 (SC), Commissioner of Customs vs. Spice Telecom, reported in (2006) 10 SCC 704 and Suchitra Components Ltd. vs. Commissioner of Central Excise, Guntur, reported in (2006) 12 SCC 452, it was held that in tax matters, clarifications issued can be only prospective, failing which it will cause hardship to the assessees. Further, by relying on the decisions of the Hon'ble Supreme Court in Mathuram Agrawal vs. State of Madhya Pradesh, reported in (1999) 8 SCC 667 and Manish Maheshwari vs. Assistant Commissioner of Income-tax and Another, reported in (2007) 3 SCC 794, it was held that admittedly there was ambiguity with regard to rate of tax payable by the assessees for the paper based decorative laminated sheets and the benefit of the said ambiguity should be extended to the assessees and not to the Revenue. With these observations, the writ petitions were allowed.

13.We are fully in agreement with the view taken by the Writ Court holding that the assessments in respect of the respondent / assessee having been completed pursuant to an order passed by the Special Tribunal and the tax at the rate of 10% was also collected, the Revenue was not justified in demanding tax at 16% by seeking to reopen the concluded assessments by issuing a clarification based on the premise that the Hon'ble Supreme court, while interpreting an entry under the Central Excise and Tariff Act, classified the product differently, that too retrospectively.

14.For all the above reasons, we hold that the appellants have not made out any ground to interfere with the order passed in the writ petition. Accordingly, the writ appeal fails and is dismissed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

sra

To

1.The Commissioner of Commercial Taxes
Ezhilagam, Chepauk, Chennai.

2.The Commercial Tax Officer,
Choolai Assessment Circle, Chennai-112.

W.A.No.1181 of 2011

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