IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.3.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

TAX CASE NO.12 OF 2016 AND CMP.NO.2973 OF 2016

Xerox Modi Corporation Ltd.,
Chennai-86. ...Petitioner/Respondent

Vs

State of Tamil Nadu, rep.by the Deputy Commissioner (CT), Chennai East Division. ...Respondent/Appellant

REVISION under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 against the order dated 7.5.2013 made in S.T.A.No.808/2005 on the file of the Sales Tax Appellate Tribunal (Additional Bench), Chennai-104 preferred against the order of the Appellate Assistant Commissioner CT (IV) Chennai-108, dated 9/2/05 made in AP.40/2004 preferred against the Order of the Commercial Tax Officer, Mylapore Assessment Circle, Chennai-28 dated 30/1/04 made in TNGST/0701187/2001-2002 for the Assessment Year 2001-2002.

For Petitioner : Mr.N.Prasad

For Respondent : Dr.Anita Sumanth, SGP(T)



Order of the Court was made by V.RAMASUBRAMANIAN,J



This tax case revision is filed by the assessee under Section 38 of the Tamil Nadu General Sales Tax Act, 1959.

2. We have heard Mr.N.Prasad, learned counsel for the petitioner and Dr.Anita Sumanth, learned Special Government Pleader (Taxes) appearing for the respondent.

3. In respect of the assessment year 2001-02, the Commercial Tax Officer passed an order dated 30.1.2004, making a demand together with a penalty under Section 12(3)(b) of the Act. As against the order of assessment, the petitioner filed an appeal before the Appellate Assistant Commissioner in A.P.No.40/2004. During the pendency of the appeal, the Department filed an enhancement application for enhancing the cost of repairs.

4. The First Appellate Authority allowed the appeal and remanded the matter for the limited purpose of determining the actual cost of repairs. The Appellate Authority also cancelled the penalty after giving a clear finding that the turnover was available in the books of accounts.

5. The assessee filed a second appeal before the Sales Tax Appellate Tribunal challenging the order of remand and challenging the finding that the full service maintenance agreement charges were taxable under Section 3B of the Act. The Department also filed an appeal to the Tribunal, challenging the cancellation of penalty by the First Appellate Authority.

6. During the pendency of both the appeals, one by the assessee and one by the Department, the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2010 was passed and it came into effect from 1.6.2010. Taking advantage of the provisions of this Act, the assessee filed an application for settlement. On 31.8.2010, the application was accepted and the assessee paid the entire arrears of tax together with 25% of the interest computed on the entire arrears at 6% per annum. The application for settlement was allowed on 7.2.2011 and a certificate in terms of Section 8 was issued. As a consequence, the Tribunal dismissed the assessee's main appeal, but allowed the appeal of the Department arising out of penalty. Therefore, the assessee is on revision.



7. There is no dispute about the fact that the application of the assessee for settlement was accepted in terms of one of the Clauses of Section 7 of the Tamil Nadu Sales Tax (Settlement of Arrears) Act, 2010. It was done only after the assessee paid the entire arrears of tax together with 25% of the interest computed on the entire arrears at the rate of 6% per annum.

8. Once a certificate is issued in terms of Section 8 of the Act, the assessee stands discharged of any further obligations by virtue of Sub-Section (1) of Section 8. Unfortunately, the

Tribunal thought that the application for settlement was only in respect of the arrears of tax and that it was not in respect of penalty. That is a misconception.

9. Therefore, the revision is allowed and the order of the Tribunal is set aside. No costs. Consequently, the above CMP is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commissioner (CT),
Chennai East Division.

2.The Sales Tax Appellate Tribunal (Additional Bench),
Chennai-104.

3.The Appellate Assistant Commissioner,
CT(IV) Chennai-108.

4.The Commercial Tax Officer,
Mylapore Assessment Circle,
Chennai-28.

5.The Assistant Registrar,
Sales Tax Appellate Tribunal,
Chennai-104.

+1cc to Special Government Pleader Sr.18617
+1cc to Mr.N.Inbarajan, Advocate Sr.18121



TC.No.12 of 2016 &
CMP.No.2973 of 2016

msm(CO)
srg(06/04/2016)