

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
12.08.2016	26.08.2016

CORAM

The Hon'ble Mr.Justice T.S.Sivagnanam

WP.No.28082 of 2016
and
W.M.P.No.24235 of 2016

M/s. NCL Wintech India Limited.,
rep. by its General Manager,
Mr.R.Ganesh,
3/380, OMR, Mettukkuppam,
Chennai – 97.

.... Petitioner

Versus

The Commercial Tax Officer,
Sholinganallur Assessment Circle,
141, Second Floor, Burma Colony,
First Main Road, Perungudi,
Chennai – 96.

... Respondent

Writ petition filed under Article 226 of the Constitution of India
praying for the issuance of a Writ of Certiorari to call for the records of the
respondent in TIN 33180926973/2014-15, dated 30.06.2016, and to quash
the same.

For Petitioner : Mr.R.Kumar

For Respondent : Mrs.Vasudha Thiyagarajan
Additional Government Pleader

ORDER

Heard Mr.R.Kumar, learned counsel for the petitioner, and Mrs.Vasudha Thiyagarajan, learned Additional Government Pleader, accepting notice on behalf of the respondent. With consent on either side, the Writ Petition itself is taken up for final disposal.

2. The petitioner is a manufacturer and dealer in Unplasticized Poly Vinyl Chloride Window system, (UPVC Window), and they are registered dealer, on the file of the respondent, under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as, TNVAT Act). In this Writ Petition, the petitioner challenges the order of assessment, dated 30.06.2016, for the assessment year, 2014-15.

3. The petitioner filed their returns in Form I, under the TNVAT Act, and were deemed to have been assessed to tax, under Section

22 (2) of the Act. The Assessing Officer, on perusal of the returns, observed that the petitioner had claimed exemption from tax on sale of UPVC Doors and Windows made to M/s.Mahindra Residential Developers Limited, an approved co-developer, in Mahindra World City, Special Economic Zone (SEZ) with authorized operations of providing infrastructural facilities in SEZ, by developing residential facilities, as per the approval granted by the Government of India, during April, 2008. In the light of the observation of the respondent, a notice, dated 12.05.2016, was issued to the petitioner, proposing to disallow the claim of exemption.

4. The sum and substance of the proposal is that, M/s.Mahindra Residential Developers Limited, is a co-developer, in the Mahindra World City SEZ, and their authorized operations is limited to developing residential facilities inside the SEZ and is also an activity in the non-processing area of the SEZ. The construction of the residential complex is not related to the activities of development, operation and maintenance of the SEZ, which are authorized operations, vested in the main developer of the said SEZ, and the aforesaid co-developer is not playing any role, in any one of these activities. Therefore, the respondent's proposing to construe the sale of goods by the dealer to the co-developer

M/s.Mahindra Residential Developers Limited, will not fall within the ambit of exemption from sales tax granted through the notification issued by the Government of Tamil Nadu. Furthermore, it was pointed out that, construction of residential complex service, is not in the list of specified services, approved by the Unit Approval Committee for availing service tax exemption, as per proceedings of the Assistant Development Commissioner, dated 08.06.2009. The letter submitted by the co-developer, dated 20.03.2009, does not specifically list the service rendered by the petitioner, in the approved list.

5. Thus, the respondent proposed that, construction done by the co-developer is not related to the activities of developing, operating and maintaining SEZ, and is ineligible for grant of exemption from payment of taxes on purchases of the goods from local registered dealers in the State of Tamil Nadu. The petitioner was granted 15 days' time to submit their objections, which was availed of by the petitioner, and they had submitted their objections on 23.06.2016. The petitioner contended that, the sale is exempted from tax, in terms of the notification issued by the Government, vide G.O.Ms.No.193, Commercial Taxes and Registration (B2) dated 30.12.2006, inasmuch as the buyer is a co-developer. They placed reliance

on the decision of this Court, in W.P.No.21453 of 2008, dated 09.01.2015, wherein, this Court upheld the circular issued by the Commissioner of Commercial Taxes, dated 24.07.2013, pertaining to levy of tax on works contract, executed to SEZ units. Further, by referring to circular No.25 of 2014, dated 30.05.2014, the petitioner reiterated their stand that they are exempt from levy of tax. The petitioner were offered an opportunity of personal hearing, and thereafter, the respondent has proceeded to complete the assessment, by passing order, dated 30.06.2016, which is impugned in this Writ Petition.

6. At the very outset, this Court pointed out to the learned counsel appearing for the petitioner that, as against the impugned order, the petitioner has an effective alternate remedy, by filing an Appeal before the Deputy Commissioner (Appeals) Chennai (East), and the reason for bypassing such a remedy.

7. The learned counsel appearing for the petitioner elaborately referred to the circulars issued by the Commissioner of Commercial Taxes, and the decision of this Court to buttress his arguments that the nature of

transaction done by the petitioner is exempt from payment of taxes. Further, it is contended that the reliance placed on the letter of the Assistant Development Commissioner, dated 08.06.2009 is erroneous, since the said letter pertain to the approval of the specified services, relating to service tax claimed by the co-developer. Therefore, it is contended that the said letter should not have been relied upon. Further, it is submitted that the petitioner is entitled to the benefit of the exemption granted by the Government of Tamil Nadu, vide G.O.Ms.No.193, dated 30.12.2006. Furthermore, it is contended that the respondent, erroneously, referred to Rule 11 A of the Special Economic Zone Rules 2006, which came into force only from 02.02.2014 to 02.02.2015, and the same would not be applicable for the relevant assessment year, and this aspect of the matter was not mentioned in the show cause notice, and, all of a sudden, the respondent has taken a different stand in the impugned order, and the petitioner had no opportunity to putforth their objections in that regard.

8. On a perusal of the impugned order, it is seen that the respondent, after referring to the statutory provisions, viz., the provisions of SEZ Act, 2005, has rendered factual finding, stating that the entire residential development done by the co-developer, to whom, the petitioner

supplied UPVC Doors and Windows is available on lease basis to both SEZ and Domestic Tariff Area entities.

9. In my view, to test the correctness of the impugned order, factual aspects have to be gone into as regards the project implemented by the co-developer. While, it may not be in dispute that the co-developer is engaged in developing the project in SEZ, it is to be seen as to whether the project of developing residential complexes is one of the approved projects, would fall within the authorized operations. Though the letter, dated 08.06.2009, issued by the Assistant Development Commissioner, pertains to service tax claim, yet, the larger question would be, as to whether, if it is part of service, did not find place in the list of approved services, would it still be a part of authorized operations for the SEZ. These issues are complicated questions of fact, and unless and until, these factual aspects are adjudicated, the question of examining the legal position would not arise. In other words, sans facts the legal provisions, the decision rendered by this Court cannot be made applicable. If done so, it would amount to “putting the cart before horse”. Therefore, I am unable to accept the contentions raised by the petitioner that they should be permitted to bypass the statutory appellate remedy. Hence, the Writ Petition

has to be held to be not maintainable.

10. In the result, the Writ Petition is dismissed. However, liberty is granted to the petitioner to file Appeal before the Appellate Authority. If the petitioner files Appeal within 30 days from the date of receipt of a copy of this order, the Appellate Authority shall entertain the same without reference to limitation. No costs. Consequently, connected W.M.P. is also closed.

26.08.2016

Index: Yes/No

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Note : Registry is directed to return the original impugned order to the counsel appearing for the petitioner under acknowledgment.

To

The Commercial Tax Officer,
Sholinganallur Assessment Circle,
141, Second Floor, Burma Colony,
First Main Road, Perungudi,
Chennai – 96.

T.S.Sivagnanam, J.,

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