IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.08.2016

Date of Reserving the Order	Date of Pronouncing the Order
27.07.2016	02.08.2016

Coram

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

W.P.No.36152 of 2004
& WMP No.4348 of 2004

Tamilnadu Petroproducts Limited,
Manali Express Highway,
Manali, Chennai - 600 068. ... Petitioner

Vs

1.The Assistant Commissioner (CT),
Fast Track Assessment Circle II,
Chennai.

2.The Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005. ... Respondents

Prayer :-These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to quash the proceedings of the second respondent herein in K.Dis.Act/11633/2004, dated 09.09.2004, while directing the first respondent herein to accept the Declaration to Form XVII issued by Hindustan Lever Limited, carrying on business at No.101, Santhome High Road, Chennai - 600028, on the sale and delivery of Linear Alkyi Benzene to Ultra Marine Pigments Limited, at Door No.25 B, SIPCOT Industrial Complex, Ranipet.

For petitioner .. Mr.N.Prasad

For Respondent .. Mr.Manokaran Sundaram AGP

O R D E R

The petitioner is a company incorporated under the Companies Act, 1956, engaged in the manufacture of Linear Alkyi Benzene (LAB) in their factory at Manali, Chennai. In this Writ Petition, the petitioner challenges a clarification issued by the second respondent, the Commissioner of Commercial Taxes, dated 09.09.2004, as well as the earlier clarification, dated 06.01.2004. Consequently the petitioner seeks for a direction upon the first respondent, the Assessing Officer of the Writ Petitioner to accept the declaration in Form XVII issued under Section 3(3) of the Tamil Nadu General Sales Tax Act, 1959, (TNGST Act), by the Hindustan Lever Limited, Chennai, (HLL), for tax payable by the petitioner on the sale of delivery of LAB for manufacture of Acid Slurry in the job work factory of HLL at Ranipet.

2. The controversy which led to the petitioner seeking for the clarification arose under the following circumstances. HLL are engaged in the manufacture of detergents and they are registered dealers on the file of the Assistant Commissioner (CT), Fast Track Assessment Circle-II, Greams Road, Chennai under the provisions of the TNGST Act and the Central Sales Tax Act, 1956, (CST Act). HLL placed purchase order dated 15.06.2000, for sale of LAB and for delivery of the same at M/s.Ultra Marine and Pigments Limited, Ranipet, (Job Worker). The said purchase order was raised by HLL from their Mangalore office. The job worker is required to manufacture Acid Slurry from LAB and such product is stock transferred to the factory of HLL at Mangalore. Therefore, the question arose as to whether the petitioner can avail the concessional rate of tax on production of form-XVII declaration. As there appeared to be some controversy, the petitioner thought fit to seek for a clarification from the Commissioner under Section 28A of the TNGST Act, requesting to clarify as to whether the subject transaction is to be treated as a local sale or interstate sale. The Commissioner by clarification No.180/2000, dated 20.12.2000, informed the petitioner that they are not eligible to issue form-XVII declaration because the manufacture goods are not for sale by them in Tamil Nadu and LAB is taxable at 11% under residuary entry 69 in part B of the first schedule to the TNGST Act, as the commodity is delivered within Tamil Nadu. Once again, the petitioner addressed the Commissioner seeking clarification by letter dated 02.02.2001, explaining in detail about the subject transaction and reiterating that the delivery of the goods terminated at Ranipet, within Tamilnadu and the transaction is liable to tax under the TNGST Act. It was also mentioned that HLL, the purchaser of LAB was a registered dealer in Tamil Nadu. The Commissioner vide clarification No.166/2001, dated 18.05.2001, reiterated the earlier clarification, dated 20.12.2000, and rejected the request of the petitioner for reconsideration of the earlier clarification. It was stated therein that the job worker is not the purchaser of the goods and also not the owner of the manufacture goods and the goods are not intended for sale by them in the state, which is an essential condition for availing concessional rates provided under Section 3(3) of the TNGST Act. While so, the petitioner's Assessing Officer, first respondent, by communication dated

03.07.2001, while responding to the petitioner's letter dated 20.04.2001, informed that if the petitioner had delivered the material, LAB at Ranipet in Tamil Nadu as per directions of HLL, Mangalore, then the transaction will be considered as local sale under TNGST Act and liable to be tax at 3% with form-XVII and at 11% without form-XVII.

3. The petitioner submitted a representation to the first respondent dated 23.10.2003, requesting to accept the form-XVII declaration and extend the concessional rate of tax. Copy of the said communication was marked to the second respondent. The second respondent taking note of the said communication, dated 23.10.2003, once again reiterated the earlier stand and stated that concessional rate of tax cannot be extended to the petitioner and form-XVII, cannot be accepted. Once again, the petitioner submitted a representation on 18.02.2004, to the second respondent, in which, the nature of transaction done by them was more clearly set out and it was reiterated that manufacture of Acid Slurry was made within the state by the job worker of HLL at Ranipet. Further, it was stated that HLL is a company with location and presence all over India including Tamil Nadu and the sale effected by the petitioner is for the manufacturing activity of HLL within Tamil Nadu. This was followed by representations to the second respondent, dated 04.06.2004 and 12.08.2004, enclosing a letter dated 20.07.2004, given by HLL, wherein among other things, HLL stated that their principal place of business was at Chennai during the assessment years 1999-2000 and 2000-2001. After all these representations, the second respondent by letter dated 09.09.2004, informed the petitioner that HLL, Mangalore, cannot make purchase of LAB against form-XVII declaration from the petitioner, though the job work was carried in Tamil Nadu by their job worker. It was further stated that as per the conditions stipulated in Section 3(3) of the TNGST Act, the registered dealers in Tamil Nadu alone can purchase goods for the purpose of manufacturing inside the State of Tamil Nadu. Accordingly, the petitioner's request to permit HLL, Mangalore, to purchase against form-XVII, from petitioner was not feasible of compliance. This communication dated 09.09.2004, is impugned in this Writ Petition.

4. Mr.N.Prasad, learned counsel for the petitioner, after elaborately referring to the facts and nature of transaction done by the petitioner, submitted that the delivery of LAB was made by the petitioner within the State of Tamil Nadu to the job worker of HLL, in other words, the delivery was effected inside the State. The product which was moved by HLL from the factory of the job worker is Acid Slurry, which is commercially different from LAB. Thus, there is delivery and consumption of LAB within the State of Tamil Nadu and LAB did not move from one state to another either pursuant to a contract of sale or an incidence of a contract of sale. If such is the factual

position, there is manufacturing activity within the State of Tamil Nadu and the fact that the job worker is a manufacturer, is not in dispute. It is further submitted that the second respondent failed to take into consideration that HLL is a registered dealer within the State and is engaged in manufacture through an agent of goods delivered within the state for which declaration in form-XVII was issued by HLL. It is further submitted that under Section 3(3) of the TNGST Act, the seller is automatically entitled to the acceptance of form-XVII, declaration, where the buyer is the registered dealer and the declaration in form-XVII is issued under Section 3(3) of the TNGST Act read with Rule 22B of the Rules. When it is not in dispute that the buyer is a dealer within the State, the sale was effected for manufacture of goods within the state and as the goods fall under serial no.7(1) of part D of the first schedule of the TNGST Act, the concession under Section 3(3) is automatic. With a view to explain what is the interstate sale, reference was made to the decision of the Hon'ble Supreme Court in the case of State of A.P. vs. National Thermal Power Corporation Ltd., reported in 2002-127-STC-280.

5. Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondents submitted that the petitioner entered into a contract with HLL, Mangalore for supply of LAB; a raw material for manufacture of detergent and as per the agreement, it had to be supplied and delivered to their job worker at Ranipet and later after conversion of raw material as Acid Slurry, the same would be transported to HLL, Mangalore for further processing and manufacturing as detergents. Referring to the purchase order dated 15.06.2000, it is submitted that it clearly shows the dealer at Mangalore had placed the purchase order and in pursuance to the same, the petitioner had effected sale to the dealer at Mangalore and the transaction is clearly an interstate sale and the only difference being delivery has been made to the job worker at Ranipet and after completion, for onward transmission to the purchaser at Mangalore. It is further submitted that merely because HLL Ltd, had business transactions and registration under TNGST Act at Chennai, the impugned transaction cannot be treated as a local sale and the petitioner will not be eligible for concessional rate of tax at 3% against form-XVII, declaration. Referring to sub-section 3 of Section 3 of the TNGST Act, it is submitted that the provision clearly stipulates that there should be a manufacture inside the state for sale in order to avail concessional rate of tax at 3%. Inasmuch as the Acid Slurry converted by job worker at Ranipet, is stock transferred to Mangalore for further processing, the manufacturing of the final product was done out side the state, Section 3(3) of the TNGST Act, is not applicable to the transaction. Therefore, it is submitted that the manufacturing activity having not been completely done inside the state, the

clarification issued by the Commissioner is perfectly valid. Further, it is submitted that the contention of the petitioner that HLL had paid 1% for stock transferring the manufactured goods outside the State in terms of Section 3(4) of the TNGST Act is irrelevant in as much as partially process goods alone were sent to Mangalore and not manufactured good namely detergents. With the above submission, the learned counsel sought to sustain the impugned clarifications.

6. I have elaborately heard the learned counsels appearing for the parties and perused the materials placed on record.

7. Before considering as to whether the petitioner is entitled to the benefit of concessional rate of tax under Section 3(3) of the TNGST Act, it would be necessary to take note of the transaction, which was done by the petitioner. At this juncture, it is pertinent to point out that there is no dispute with regard to the nature of transaction done by the petitioner and therefore, the issue as to whether the petitioner is entitled to concessional rate of tax, is being adjudicated by this Court in this Writ Petition. In other words, in the absence of any disputed questions of fact, and on the admitted facts, it has to be seen whether the subject transaction was entitled to be treated as a intrastate transaction, the same is taken up for adjudication.

8. The petitioner is registered dealer in the State of Tamil Nadu having their factory at Manali and assessee on the files of the first respondent. HLL, Mangalore placed a purchase order on the petitioner, dated 15.06.2000 for purchase of LAB. HLL is a registered dealer in the State of Tamil Nadu under the TNGST and CST Act on the file of the Assistant Commissioner, (CT), Fast Track Assessment Circle No.II. The instruction given to the petitioner in the purchase order was to deliver the product to a factory at Ranipet, who are job workers for HLL.

9. It is not in dispute that the job worker has a manufacturing facility at Ranipet and have the requisite licences and registration. The LAB sold by the petitioner was used as a raw material in the manufacture of Acid Slurry and such manufacturing activity took place within the State of Tamil Nadu. What was stock transferred to Mangalore by HLL was not LAB, but a commercially different product namely, Acid Slurry.

10. Sub-section (3) of Section 3 of the TNGST Act, states that notwithstanding anything contained under Section 5, [sub-section 2, 2-A, 2-C], but subject to the provision of sub-section (1), the tax payable by a dealer in respect of sale of any goods including consumables, packing material and labels, but excluding plant and machinery, to another dealer for use by the latter in the manufacture inside the State, for sale by him

of any goods other than ethyl alcohol, absolute alcohol, etc., shall be at the rate of rate of only 3% on the turnover relating to such sale. Thus, for a dealer to be entitled to the benefit under sub-section (3) of Section 3, he has to show that the sale of goods to another dealer was for the use by the latter in the manufacture inside the state for sale.

11. As mentioned above, the undisputed fact is that the petitioner had sold LAB to HLL based on a purchase order placed from Mangalore with specific instruction to deliver the product at a factory in Ranipet. The specific stand of the HLL is that the factory at Ranipet is their job worker. The Revenue has not disputed this stand taken by the HLL as well as the petitioner. In the absence of any dispute, it goes without saying that the sale was effected to HLL at their factory at Ranipet, since the factory at Ranipet was their job worker. If such is the undisputed factual position relating to the nature of transaction, all that is required to seen was whether there was manufacture inside the state for sale.

12. Undoubtedly, the products sold by the petitioner was not the product which was moved out of the Ranipet factory on stock transfer to HLL Mangalore. Thus, the factory at Ranipet had manufactured a commercially distinct product than what was sold by the petitioner to HLL. In other words, the products sold by the petitioner was LAB, the product which was manufactured from LAB was Acid Slurry. In my view, it would be unnecessary to test the present transaction based on whether the product manufacture within the State was a intermediary product for manufacture of another product outside the state.

13. At this juncture, we may see as to what is an interstate sale. The Hon'ble Supreme Court in the case of NTPC (Supra), pointed out that a sale in the course of interstate trade has three essential ingredients namely, there must be a contract of sale, incorporating a stipulation, express or implied, regarding inter-State movement of goods; that a movement of goods, which takes place independently of a contract of sale, would not fall within the meaning of interstate sale. Explaining the concept further, the Supreme Court pointed out, if there is no contract of sale preceding the movement of goods, obviously the movement cannot be attributed to the contract of sale. Similarly, if the transaction of sale stands completed within the State and the movement of goods takes place thereafter, it would obviously be independently of the contract of sale and necessarily by or on behalf of the purchaser alone and therefore, the transaction would not have an inter-State element.

14. If the case on hand is tested on the anvil of the decision of the Hon'ble Supreme Court, it is not in dispute that

the contract of sale with the petitioner stood completed within the State of Tamil Nadu upon delivery of the goods at Ranipet. The movement of the goods after undergoing a process of manufacture and after being converted into a commercially different product is an independent transaction and the transaction could not be treated as an interstate element.

15. The Revenue does not dispute the fact that the delivery of LAB was effected within the State of Tamil Nadu and what moves out from the factory of the job worker is only Acid Slurry and not LAB. Thus, it cannot be disputed that there was manufacturing activity inside the State of Tamil Nadu in as much as the product sold namely LAB was converted into Acid Slurry at Ranipet in the factory of the job worker. Thus, sofar as the manufacturing activity done by the job worker, the product which emerges upon manufacture namely Acid Slurry is infact, a final product in such process though in the chain of manufacturing activities, it may be an intermediary product. The contention of the respondent that payment of tax by HLL at 1% under Section 3(4) of the TNGST Act is irrelevant cannot be countenanced. This is a very relevant factor, which goes to show that the HLL is a manufacturer.

16. Having come to such a conclusion, it has to be seen as to whether the second respondent while issuing the impugned clarification, dated 09.09.2004, was justified in rejecting the petitioner's request to treat the transaction against form-XVII declaration. The reasons assigned in the impugned clarification is that under Section 3(3) of the TNGST Act, registered dealers in Tamil Nadu alone can purchase goods for the purpose of manufacturing inside the State of Tamil Nadu and hence, the request of the petitioner to permit HLL, Mangalore, to purchase against form-XVII from the petitioner is not feasible of compliance. Thus, the second respondent states that for availing concessional rate of tax under Section 3(3) of the TNGST Act, the first pre-requisite is the purchaser should be a registered dealer in the State of Tamil Nadu. Secondly, the purchase of the goods should be for the purpose of manufacturing inside the State of Tamil Nadu.

17. It is not in dispute that HLL are registered dealer within the State of Tamil Nadu under the TNGST Act and the CST Act on the file of the Assistant Commissioner (CT), Fast Track Assessment Circle -II, Chennai. HLL have given a letter dated 20.07.2004, which is in the nature of a certificate or a declaration stating that they have entered into a processing contract with the job worker for processing LAB to Acid Slurry at their factory at Ranipet. The said factory at Ranipet is registered as an additional place of business for HLL under the TNGST Act and this processing agreement was effective during the assessment years 1999-2000, and 2000-01. The LAB purchased by

HLL, pursuant to purchase order placed from Mangalore with specific instruction to deliver at HLL's additional place of business at Ranipet and such delivery was effected by the petitioner at the Ranipet factory in trust for and on behalf of HLL and manufactures, the prescribed finished goods which was then stock transferred to the factory at Mangalore. Further the Revenue does not dispute the fact that during the Assessment Years 1999-2000 and 2000-2001, HLL's principal place of business was at Apex Plaza, No.3, Nungabakkam High Road, Chennai-600034. This premises is the registered premises of HLL. Along with rejoinder affidavit filed by the petitioner, they have enclosed the copy of D1 certificate of registration issued under the TNGST Act to show that the factory at Ranipet their additional place of business.

18. Thus, two para meters pointed out by the second respondent in the impugned clarification have been satisfied by the petitioner with regard to subject transaction. To bring a transaction with the scope of Section 3 of the CST Act, essentially there should be sale of goods and transport of these goods from one state to another as a result of, or as an integral part of sale. When the sale and the interstate movement of the goods are not interconnected, as there is no contractual obligation or other obligation to take the goods to another state or when there is no evidence that the transport of the goods to the other state was caused by the contract of the sale, there could be no interstate sale.

19. In terms of the purchase order, dated 15.06.2000, the petitioner was directed to effect the supplies as per the specifications and subject to the approval of the buyer and the material to be delivered to their job worker at Ranipet. Thus, the contract of sale was completed upon delivery of the goods at Ranipet within the state of Tamil Nadu. The seller namely, the petitioner had no contractual or other obligation to take the goods to another State nor there is any evidence produced by the Revenue in this regard. Thus, when the transaction done by the petitioner is factually not disputed and the transaction/sale concluded within the State at Ranipet, which is an additional place of business of HLL, undoubtedly, the transaction is a intrastate sale and the petitioner is entitled to avail concessional rate of tax on submission of form-XVII declaration.

20. In the light of the above discussion, the Writ Petition is allowed and the impugned orders are quashed and the first respondent is directed to accept the form-XVII, issued by HLL, on the sale of delivery of LAB to the job worker's factory

at Ranipet and complete the assessment for the relevant year in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.
pbn

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1.The Assistant Commissioner (CT),
Fast Track Assessment Circle II,
Chennai.

2.The Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

+ 1 cc to Mr.N.Inbarajan, Advocate Sr 44033

gj(co)
prk29/8

W.P.No.36152 of 2004
& WMP No.4348 of 2004