IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.6.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.27356 of 2004

M/s.S.K.F.Bearings(I) Ltd.,
rep.by its Company Secretary,
Ramesh C.Pandiya ... Petitioner

vs.

The Commercial Tax Officer,
Manali Assessment Circle,
Chennai-600 108 .... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records on the file of the respondent in his proceedings in TNGST No.1082666/2001-2002 dated 1.3.2004 and quash the same and consequently direct the respondent to pass order afresh after considering the Circular issued by the Special Commissioner and Commissioner of Commercial Taxes in K.Dis.Q2/81395/02 dated 14.12.2002.

For Petitioner : Mr.S.Rajasekar

For Respondent : Mrs.Kanmani Annamalai,A.G.P.

ORDER

Heard Mr.S.Rajasekar, learned counsel for the petitioner and Mrs.Kanmani Annamalai, learned Additional Government Pleader, for the respondent.

2. The petitioner, who is a dealer in Ball and Roller Bearings, is registered on the file of the respondent under the provisions of the erstwhile Tamil Nadu General Sales Tax Act and the challenge in this writ petition is to an order of assessment.

3. The petitioner has challenged the impugned order on two grounds. Firstly on the ground that the respondent failed to consider the split in the turnover between the period from April 2001 to 31.10.2001, during which period, the exemption was up to Rs.25 Crores and for the period from November 2001 to March 2002, where the exemption was up to Rs.10 Crores. The

matter concerns the levy of Additional Sales Tax under the provisions of the Tamil Nadu Additional Sales Tax Act, 1970. The second ground raised by the petitioner is that the assessing officer failed to take into consideration the Circular issued by the Commissioner, dated 14.12.2002, which being a statutory Circular issued in exercise of powers under Section 28-A of the Tamil Nadu General Sales Tax Act would bind the assessee.

4. In the counter affidavit filed by the respondent it is stated that the Circular will not bind the assessing officer. However, this stand is incorrect because the Circular has been issued in exercise of the powers under Section 28-A of the Act and it would bind the assessee. Further in the counter affidavit reference has been made to a judgment of the Honourable Division Bench of this Court in the case of Philips India Limited Vs. Assistant Commissioner (CT), Fast Track Assessment Circle II and others (137 STC 134). However, there is a subsequent decision of another Honourable Division Bench in the case of the State of Tamil Nadu, represented by the Deputy Commissioner of Commercial Taxes, Tiruchirappalli Division vs. Tvl.National Time Company in TC(R) No.2316 of 2008, dated 8.7.2010. In the said decision, the issue as to whether the year could be split up was considered and it was held as follows:

> "13. The definition of the expression "year" which means the financial year, is only for the purpose of ascertaining what is the financial year with reference to which the tax liability under the main Act as well as the Additional Sales Tax under the Tamil Nadu Sales Tax Act is to be worked out. The mere fact that under Section 2(1)(a), a reference is made to a "year", the same will not in any way create any different impact, while applying the liability or the rate of tax to be worked out during the financial year. In other words, if in the very same financial year, different rates are to be worked out by virtue of prescription of such different rates, due to statutory amendments, the only exercise to be carried out would be to ascertain the period for which the different rates of tax are to be worked out. In our considered view, such prescription of different rates in that financial year will not in any way affect the very basis of the liability created. Once we steer clear of the said position, we do not find hurdle at all in bifurcating the financial year in the case of any assessee, while applying the un-amended section 2 (1)(a) upto 31.7.1996 and the liability after its amendment on and after 1.8.1996, for the purpose of calculating the additional sales tax liability."

5. In the light of the above decision as well as the statutory Circular dated 14.12.2002, the respondent has to re-do the entire assessment afresh. Accordingly, the writ petition is allowed and the impugned order is set aside. The matter is remanded to the respondent for fresh consideration to take note of the decision referred supra and also the Circular dated 14.12.2006 and proceed in accordance with law. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Manali Assessment Circle,
Chennai-600 108.

+1cc to the Special Government Pleader Sr.34869

W.P.No.27356 of 2004

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srg 04/07/2016