IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.22375 to 22378 of 2017
and
W.M.P.Nos.23454 to 23461 of 2017

M/s. Sri Mookambigai Traders,
Rep.by its Proprietor-M.Shanmugam,
No.46/169, 3rd Road, Leigh Bazaar,
Salem - 636 009,
Salem District. ... Petitioner in W.P.Nos. 22375 to 22377 of 2017

M/s.SMT Traders,
Rep.by its Proprietor-M.Shanmugam,
No.47/169, 3rd Road, Leigh Bazaar,
Salem - 636 009,
Salem District. ... Petitioner in W.P.No.22378 of 2017

Vs.

The Assistant Commissioner[CT][FAC],
Leigh Bazaar Circle,
Salem,
Salem District. ... Respondent in all W.Ps

Common Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the Respondent in its impugned proceedings made in TIN.33062621241/12-13, 13-14 and 14-15 respectively and TIN.33062621726/13-14 dated 09.03.2017 in WP 22375 to 22377/17 and 15.05.2017 quash the same.

For Petitioner :M/s.R.Hemalatha(in all W.Ps)

For Respondents :Mr.K.Venkatesh
Government Advocate
(in all W.Ps)

C O M M O N O R D E R

Heard M/s.R.Hemalatha, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate, appearing for the respondent. With the consent on either side, these writ petitions are taken up for disposal.

2.The petitioners are trading in Turmeric and Turmeric powder at Salem and they are assessee on the file of the respondent in these writ petitions. The petitioners have sought for issuance of writ of certiorari to quash the notice issued by the respondent dated 09.03.2017. In the impugned notice, the respondent has stated that under Section 12 of the Tamil Nadu Value Added Tax Act, 2006 (in short "TNVAT Act"), every dealer, who in the course of this business purchases from a registered dealer or from any other person any goods, in the circumstances in which no tax is payable by the registered dealer on the price of such goods under the Act, and either despatches or carries them to a place outside the State except as a direct result of sale of purchase in the course of interstate trade or commerce or in the course of except out of the territory of India, shall pay purchase tax on the turnover relating to the purchase at the rates specified in the Schedules to the TNVAT Act.

3.Further, it has been stated that under the Commodity code 718 of the TNVAT Act no tax leviable, on sale of Turmeric and Turmeric Powder by a dealer whose turnover in respect of sale does not exceed Rs.300 Crores in a year. Under Commodity Code 2052 of the TNVAT Act, on the sale of goods not specified in any of the Schedules tax is leviable at the rate of 5%. On a scrutiny of Form WW filed by the petitioners for the relevant years, it is stated that the petitioners had effected purchases of Turmeric from Agriculturists and from other dealers without payment of tax. A portion of the goods were transferred under consignment sale and stock transfer interstate and the petitioners had not paid purchase tax as per Section 12 in respect of the goods purchase from local dealers and sent on stock transfer. Therefore, the respondent proposed to levy purchase tax for such transaction and directed the petitioners to file their objections within a period of 7 days. The petitioners are before this Court, challenging the impugned show cause notices.

4.M/s.R.Hema latha, learned counsel for the petitioners submitted that the respondent had failed to note, that under Section 12 of the TNVAT Act, they are entitled for the benefit of the clarification dated 09.11.1989 and 27.12.2000 till the same is withdrawn prospectively by clarification dated 28.01.2002 and therefore, the proposal to levy of purchase tax on the purchase turnover under Section 12 of the TNVAT Act is illegal.

5.The learned counsel further submitted that a Division Bench of this Court, in the case of Hotel Shri Kannan Vs. State of Tamil Nadu reported in [2007] 8 VST 97(Mad) held that Section 7(A) should be a charging section as well as a remedial one, in as much as it levies a tax on the purchases of goods by a dealer from a registered dealer or from any other person who may be either unregistered dealer or other persons such as agriculturists and other producers who are not liable to pay tax under the TNVAT Act on the sales or purchases.

6.Further, in the said decision, the levy of purchase tax on Turmeric and Turmeric Powder was elaborately discussed and it was held that levy of purchase tax is illegal and it is against the provisions of the Act and the respondent was directed to circulate pass orders in terms of the directions contained therein.

7.The learned counsel referred to Section 2(ooo) of the TNGST Act, 1959 and submitted that the same defines tax to mean and includes a sales tax, purchase tax, re-sale tax or surcharge, as the case may be and when this Section remains the same, the proposed levy of purchase tax in terms of Section 12 of the TNVAT Act, 2006 is highly arbitrary, illegal and against the principles of natural justice.

8.Further, it is submitted that the petitioners who deal with goods specified under the Fourth Schedule to the Act shall not be liable to pay any tax under the Act and the word “any tax” used in Section 12 of the Act include “Purchase Tax”. Further, it is contended that the impugned notices proposing to levy purchase tax is contrary to the circular issued by the Department dated 24.12.1999 and the circular holds good even as on date. Further section 7(A) of the erstwhile TNGST Act, 1959 and Section 12 under TNVAT Act are pari materia provisions and hence, levy of purchase tax on the Turmeric and Turmeric Powder is against the provisions of the Act and also the circular issued by the Department. Therefore, it is submitted that the impugned notices are liable to be set aside.

9.The learned Government Advocate, by referring to the written instructions given by the respondent vide communication dated 31.08.2017 submitted that the petitioners are registered dealers under the TNVAT Act and doing business in Turmeric and Turmeric Powder, etc. They have purchased Turmeric from unregistered dealers and some portion of the goods were transferred under consignment sale or stock transfer outside the state for Rs.2,68,41,798/- during the year 2012-2013. As the purchases have not suffered tax and were disposed of other than by way of sale outside the state, the above purchases are liable to tax under section 12(1)(c) of the TNVAT Act and hence, a notice is issued in Tin No.33062621241/2012-2013 dated 09.03.2017 and TIN No.33062621726/13-14 dated 15.05.2017 for which the dealers have filed their objections in which they have stated that, they have purchased Turmeric from registered and unregistered dealers and effected sales outside the state on stock transfer/consignment sale under CST Act and thus, their purchases are done under TNVAT Act and the sales are made under section 8(1) & 8(2) of CST Act. They have further stated that as there is conditional exemption in the state, if it is sold outside the state, automatically it will be exempted. Hence the levy of purchase tax in the state is against the CST Act as the sales comes under CST Act and no such provision is available to levy the tax under CST Act.

10.Further, it is submitted that the respondent has not passed any assessment order and as the petitioner has approached this Court by way of these writ petitions challenging show cause notices, the writ petitions are not maintainable. Further, it is submitted that the petitioners have wrongly understood that the tax is proposed for stock transfer made under CST Act. The Turmeric is taxable item falls under I schedule Part-B-item No.52-CC No.2052 at 5% and at the same time, the Government gives a conditional exemption to the dealers under I Schedule Part B-item No.18-CC No.718 whose total turnover in respect of those items does not exceed Rs.300/- Crores in a year. Thus, it is clear that the goods(Turmeric) are taxable and the exemption is allowed on certain conditions only and not fully exempted as narrated by the petitioner.

11.It is further submitted that the despatch of Turmeric purchased from Agriculturists outside the state for consignment sale will attract purchase tax under section 12 of the Act. (VAT/40823/07(VCC No.1269)dated:19.09.2007)

12.It is further submitted that if the goods are sent outside the state other than by way of sale, purchase tax is leviable at the appropriate rate for the goods purchased from agriculturist or unregistered dealer, which were sent outside the state for sales on consignment basis (88STC P.98 SC).

13.It is further submitted that the goods so exempted not being taxable goods cannot be brought to charge under section 12 of the TNVAT Act. But, in this case, the goods are taxable one and exemption is allowed with condition and therefore, the proposed levy of tax proposed under section 12 of the TNVAT Act is correct.

14.I have elaborately heard the learned counsels for the parties and carefully perused the materials placed on record. The case of the petitioners is largely based on the decision of the Hon'ble Division Bench in the case of Hotel Shri Kannan Vs. State of Tamil Nadu (referred supra). In the said decision, the Hon'ble Division Bench disposed of the cases by issuing the directions as extracted hereunder:

> Since the dealers, in these batch of cases, except a few, who, unfortunately, failed to place reliance on the Circular D.Dis.Acts Cell II/75893/99, dated December 24, 1999, as amended by the clarification No.91/2000, D.Dis.Acts Cell II/52300/2000, dated October 4, 2000, approached this Court challenging the show cause notices, taking into consideration the scope of section 7A of the Act referred to above, suffice it to pass the following order:
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> 1. The assessment orders passed without reference to the Circular D.Dis.Acts Cell II/75893/99, dated December 24, 1999, as amended by the clarification No.91/2000, D.Dis.Acts Cell II/52300/2000, dated October 4, 2000 stand set aside;
> 2. all the dealers are permitted to submit their objections to the impugned show cause notices, supported with materials they propose to rely upon, of course placing reliance on Circular D. Dis.Acts Cell II/75893/99, dated December 24, 1999, as amended by the clarification No.91/2000, D.Dis.Acts Cell II/52300/2000, dated October 4, 2000, within thirty days from the date of receipt of copy of this order and the same shall be forwarded by the respective assessing authority to the Commissioner of Commercia Taxes; and
> 3. to direct the Government to authorise the Commissioner of Commercial Taxes to decide:
>   (a) as to the applicability of the Circular D.Dis.Acts Cell II/75893/99, dated December 24, 1999, as amended by the clarification No.91/2000, D.Dis.Acts Cell II/52300/2000, dated October 4, 2000, to the case of the dealers, depending upon the facts of each case; and
>   (b) to pass such other further orders, as the case may be, in accordance with law.

15.It may be true that the above direction was issued in a challenge to the power of the respondent therein to levy purchase tax under Section 7(A) of the TNGST Act. It is seen that those cases were also filed at the stage, when show cause notices were issued to the respective dealers. While disposing of the writ petitions, certain directions have been issued by the Hon'ble Division Bench which has directed the dealers to submit their objections. Therefore, in my considered view, it would be improper to interdict the proceedings at the very threshold, namely, at the stage of show cause notice. Admittedly, the respondent has jurisdiction to issue the impugned show cause notices and what has now been contested by the petitioners is that they have no power to levy purchase tax. This issue involves adjudication of disputed questions of facts and therefore, the petitioners have to necessarily submit their objections to the impugned notices. The petitioners are free to raise all contentions including the effect of the decision of the Hon'ble Division Bench in the case of Hotel Shri Kannan Vs. State of Tamil Nadu (referred supra) and the effect of the circular dated 24.12.1999. Therefore, at the threshold, this Court is not inclined to set aside the impugned notices.

16.For the above reasons, the writ petitions are held to be premature and not maintainable and accordingly, the same are dismissed. The petitioners are directed to submit their objections to the impugned notices, within a period of 15 days from the date of receipt of a copy of this order, raising all contentions and on receipt of the objections, the respondent shall afford an opportunity of personal hearing, consider the factual and legal submissions and pass a reasoned order on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner[CT][FAC],
Leigh Bazaar Circle,
Salem,
Salem District.

+ 4 cc to M/s.R.Hemalatha, Advocate,SR.64618
+ 1 cc to The Special Govt.Pleader, SR.64647

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and
W.M.P.Nos.23454 to 23461 of 2017

NR 12/10/2017