IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.9098 of 2009
and
M.P.No.1 of 2009

Green Ply Industries Ltd.,
Represented by its Manager,
Shyam Sunder Verma,
69/37, Choolai High Road,
Chennai - 112. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 5.

2.The Commercial Tax Officer,
Vepery Assessment Circle,
Chennai - 7. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records in CST 816694/2005-06 dated 16.03.2009 on the file of the second respondent and quash the same.

For Petitioner : Mrs.Rukmani Venugopalan
For Mr.S.Raveekumar

For Respondents : Mr.K.Venkatesh
Government Advocate

ORDER

Heard Mrs.Rukmani Venugopalan, learned counsel appearing for Mr.S.Raveekumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents.

2.The petitioner has impugned a show cause notice issued by the 2nd respondent, Assessing Officer proposing to reassess the petitioner's turnover to higher rate of tax at 16.8% by reopening the completed assessment for the year 2005-2006 under the provisions of the Central Sales Tax Act,1956.

3.The learned counsel for the petitioner submits that the issue involved in this writ petition is squarely covered by the decision of the Division Bench of this Court in the case of The Commissioner of Commercial Taxes, Chennai and another V. M/s.Sundk India Ltd., in W.A.No.1181 of 2011 dated 05.08.2015. In the said case also, the writ petition was filed challenging a notice proposing to reopen the total and taxable turnover of the assessee therein under the provisions of the Tamil Nadu General Sales Tax Act, 1959, who was a dealer in paper based decorative laminated sheets, which were received from other States and subjected to payment of tax at the point of first sale in the State. The appeal filed by the Revenue was dismissed by the Division Bench and the operative portion of the Judgment reads as follows:

> "8.After considering the submissions made on either side, the Writ Court proceeded to consider the relevant entry under the TNGST Act, namely, Entry No.22 (iv) of Part C and Entry No.8 (ii) of Part E and pointed out that the first appellant issued the clarification dated 07.04.2007 by relying upon the judgment of the Hon'ble Supreme Court, however, before issuing the said clarification, no notice was issued to the assessees and a writ petition was filed in W.P.No.16867 of 2007 contending that when the earlier clarification directing the payment of tax at 16% was cancelled, opportunity of hearing was given to the assessee and while cancelling the same and enhancing the rate of tax to 16%, no notice was issued. This submission was accepted and the said writ petition was allowed and the clarification dated 07.04.2007 was set aside by order dated 29.01.2008. It is, thereafter, the second clarification was issued on 30.05.2008 reiterating the earlier clarification and stating that the said product is taxable at 16% under Entry 8 (ii) of Part-E of the First Schedule and if the product is imported, it is taxable at 20% under Entry 9 of Eleventh Schedule.
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> 9.The question which arose for consideration in the batch of cases was whether the interpretation given by the Hon'ble Supreme Court with respect to entry made in the Central Excise Tariff, 1985, with regard to paper based decorative laminated sheets can be relied on by the first appellant to levy and collect tax under the TNGST Act, which is a separate enactment passed by the State legislature. The Writ Court took note of a decision of the Division

Bench of this Court in the case of Associated Agencies vs. State of Tamil Nadu, reported in (1993) 89 STC 447, wherein a similar issue was considered with regard to 'Pesticides' and 'Insecticides', which were defined under Section 3(e) of the Insecticides Act, 1968 (Central Act), wherein the Division Bench took note of the fact that the Insecticide Act, 1968, defined fungicides and weedicides to be included in the expression 'pesticides' and held that the legislature is presumed to be aware of the need of the people and while classifying the entries in a particular schedule, if it chose not to include certain commodities in the first schedule, its intention is obvious that it did not wish to extend the benefit of single point taxation in respect of those commodities.

10.The Writ Court also took note of the decision of the Bombay High Court in the case of Neoluxe India Private Limited and Anr. vs. Commissioner of Sales Tax, Vikrikar Bhavan, Bombay and Anr., reported in (2008) 13 VST 157 (Bom) wherein the issue which was considered was whether the decision rendered under the Central Excise Act and Central Excise Tariff has relevance in interpreting the entry relating to plastic laminates under the Bombay Sales Tax Act and it was held that the decision rendered under the Central Excise Act has no relevance in interpreting the words ''plastic laminates'' as contained in the Bombay Sales Tax Act. Reliance was also placed on the decision of the Division Bench of this Court in the case of State of Tamil Nadu vs. Hajee P.Syed Mohammed (Decd) and Anr., reported in (1993) 91 STC 195, which also considered a similar issue with regard to description of paper as contained in entry 117 of the First Schedule to the TNGST Act and it was held that it is not only all comprehensive, but includes paper of all sorts and all kinds of paper even other than those illustrated or enumerated in the entry.

11.Further, the contention of the respondent / assessee was that the Tamil Nadu Taxation Special Tribunal having considered the issue with regard to taxability of paper based laminated sheets and the assessment having been completed and the tax at 10% was collected, based on the decision of the Special Tribunal, the question of reopening the same does not arise. It was further pointed out that the entry contained in the TNGST Act has not been amended after the interpretation given by the Special Tribunal and the circular issued by the first appellant cannot be sustained and the department was not justified in reopening the assessments already made and tax having been collected.

12.By referring to the decisions of the Hon'ble Supreme Court in the case of Government of India vs. Indian Tobacco Association, reported in (2005) 187 ELT 162 (SC), Commissioner of Central Excise, Pune vs. Pudumjee Pulp & Paper Mills Ltd., reported in (2006) 198 ELT 330 (SC), Commissioner of Customs vs. Spice Telecom, reported in (2006) 10 SCC 704 and Suchitra Components Ltd. vs. Commissioner of Central Excise, Guntur, reported in (2006) 12 SCC 452, it was held that in tax matters, clarifications issued can be only prospective, failing which it will cause hardship to the assessees. Further, by relying on the decisions of the Hon'ble Supreme Court in Mathuram Agrawal vs. State of Madhya Pradesh, reported in (1999) 8 SCC 667 and Manish Maheshwari vs. Assistant Commissioner of Income-tax and Another, reported in (2007) 3 SCC 794, it was held that admittedly there was ambiguity with regard to rate of tax payable by the assessees for the paper based decorative laminated sheets and the benefit of the said ambiguity should be extended to the assessees and not to the Revenue. With these observations, the writ petitions were allowed.

13.We are fully in agreement with the view taken by the Writ Court holding that the assessments in respect of the respondent / assessee having been completed pursuant to an order passed by the Special Tribunal and the tax at the rate of 10% was also collected, the Revenue was not justified in demanding tax at 16% by seeking to reopen the concluded assessments by issuing a clarification based on the premise that the Hon'ble Supreme court, while interpreting an entry under the Central Excise and Tariff Act, classified the product differently, that too retrospectively.

14.For all the above reasons, we hold that the appellants have not made out any ground to interfere with the order passed in the writ petition. Accordingly, the writ appeal fails and is dismissed. No costs."

4.The learned Government Advocate appearing for the Revenue does not dispute the legal position, but would submit that the impugned proceeding is only a notice and therefore, the petitioner can submit their objection.

5.This Court is not inclined to accept the stand taken by the learned Government Advocate as the Division Bench has already laid down the legal position and held that similar notices are without jurisdiction. Therefore, the petitioner need not be directed to file objections to the notice and then after an order is passed challenge the same.

6.Thus, following the decision of the Division Bench in the case of Sundek India Limited, this Writ Petition is allowed and the impugned proceedings are quashed. No costs. Consequently, connected miscellaneous petition is closed.

Sgl

/sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
1.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 5.

2.The Commercial Tax Officer,
Vepery Assessment Circle,
Chennai - 7.
+1 CC to Mr. S. Raveekumar , Advocate Sr.No. 78874
+1 CC to Spl. Govt., Pleader (Taxes) Sr.No. 78965

W.P.No.9098 of 2009

MD: 27/11/2017