IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

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THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P. No. 14068 of 2007
&
M.P. No. 1 of 2007

Tvl.P. Selvaraj ..Petitioner

Vs.

1. The Commercial Tax Officer,
Alwarpet Assessment Circle,
Chennai - 600 018.

2. The Appellate Assistant Commissioner
(CT) IV,
Kuralagam, Chennai - 600 108. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records of the 2nd respondent in A.P. No. 153/2006 dated 18.10.2006 confirming the order of the 1st respondent in TNGST/0820020/2002-03 dated 30.06.2006, quash the same, insofar it relates to the levy of additional sales tax on resale value of cement effected by the petitioner.;

For Petitioner :: Mr.S. Raveekumar

For Respondents:: Mr.S. Kanmani Annamalai,
Addl. Govt. Pleader

O R D E R

Heard Mr.S. Raveekumar, learned counsel for the petitioner and Mr.S. Kanmani Annamalai, learned Additional Government Pleader for the respondents.

2. The petitioner has filed this writ petition challenging the order passed by the 1st respondent, which is an order of assessment under the TNGST Act, 1959 for the assessment year 2002-2003 dated 30.06.2006 as confirmed by the 2nd respondent in appeal in A.P. No. 153/2006 dated 18.10.2006.

3. Two issues arise for consideration in this matter:

(i) Whether the levy of additional sales tax at 1% on the turnover relating to resale of cement is sustainabe or not?

(ii) Whether the levy of penalty is sustainable or not?

4. In response to the notice issued by the 1st respondent dated 20.01.2006, the petitioner filed their objections on 13.02.2006. The gist of the objections with regard to the levy of 1% additional sales tax is as follows:

> "3. It may be specificallly noted that Explanation I Section 2(1)(aa) specifically stipulates that the taxable turnover for this clause includes the turnover of the agent in the hands of the principal. Hence, by deducting the turnover effected by us on behalf our principal (which has been valid by considered for its levy of additional sales tax on such principal hands) cannot be considered as "taxable turnover"for the purposes of additional sales tax in our hands. In that view of the matter our taxable turnover in our hands in below R.10crores. Again, the 1% additional sales tax is applicable as per Section 2(1)(aa) of the TNGST Act 1970 if and only is the "taxable turnover" as per this clause exceeds Rs.10 crores but less than Rs.25 crores. But here the turnover is less than Rs.10 crores and hence, the proposal to levy additional sales tax 1% is not warranted."

Thus, the 1st respondent ought to have seen whether the stand taken by the petitioner that while calculating taxable turnover for the purpose of levy of additional sales tax, should the resale turnover be excluded is justified or not. Unfortunately, the Assessing Officer, namely, the 1st respondent, in a cryptic manner, confirmed the proposal in the notice dated 20.01.2006 and did not take note of the fact that in the original assessment order, it is stated that M/s. Madras Cements Limits have included the turnover of Rs. 42,89,380/- in their monthly returns for March, 2003 and paid additional sales tax on their taxable turnover to Commercial Tax Officer-III, Virudhunagar, including the additional sales tax of Rs.1,28,681/-. Therefore, the petitioner filed an appeal before the 2nd respondent with the fond hope that the 2nd respondent would re-examine the matter. Though the 2nd respondent framed the above referred two questions, the order of revised assessment dated 30.06.2006 was confirmed and the appeal was dismissed. The levy of penalty was also confirmed.

5. So far as the first question is concerned, this Court is satisfied that the both the authorities did not appreciate the factual matrix and did not endeavour to make an exercise to ascertain as to whether the stand taken by the petitioner is justified or not. Therefore, the impugned order requires to be set aside insofar as the finding with regard to levy of additional sales tax at 1% on the turnover relating to resale of cement.

6. With regard to the second question whether the levy of penalty is sustainable or not, the issue is no longer res integra and it has been held in several decisions that there is no such power to levy penalty or interest on additional sales tax. One such decision is in the case of S. GURUNATHAN V. THE DEPUTY COMMERCIAL TAX OFFICER, THIRUPATHUR AND ANOTHER in W.P. (MD) Nos. 5111 of 2009 dated 17.06.2014.

7. For the above reasons, the writ petition is allowed and the finding with regard to levy of additional sales tax at 1% on the turnover relating to resale of cement is set side and the matter is remitted to the 1st respondent for fresh consideration. So far as the levy of penalty is concerned, following the earlier decision of this Court, the same is set aside. No costs. Connected M.P. is closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

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To

1. The Commercial Tax Officer,
Alwarpet Assessment Circle,
Chennai - 600 018.

2. The Appellate Assistant Commissioner
(CT) IV,
Kuralagam, Chennai - 600 108.

+ 1 cc to Mr.S. Raveekumar Advocate,SR.69184

W.P. No. 14068 of 2007

CP(CO)
NR 24/10/2017