IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.12.2017

Coram

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

Writ Petition No.27317 of 2007
and
M.P.No.1 of 2007

S. S. D Oil Mills Co. Ltd.,
rep. by its Director Mr. D. Ramamurthy ...Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Commercial Taxes,
Fort St. George, Chennai - 600 009.

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

3. The Deputy Commercial Tax Officer,
Sriperumbudur Assessment Circle,
Poonamallee,
Chennai - 600056. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records, relating to the impugned order, in his Lr. No.L. Dis.Acts Cell-1/7975 of 2006, dated 05.04.2006, passed by the second respondent and to quash the same and to direct the second respondent to pass orders, clarifying that the transaction is not exeigible to additional sales tax as per Section 2 (1) (aa) of that additional sales tax act, as per the amendment Act, 31 of 1996.

For Petitioner : Mr.M. Md. Ibrahim Ali

For Respondents : Mr.S. Kanmani Annamalai
Additional Government Pleader (Tax)

O R D E R

Heard Mr.M. Mohammed Ibrahim Ali, the learned counsel appearing for the petitioner and Mr.S. Kanmani Annamalai, the learned Additional Government Pleader (Tax) for the respondents.

2. The petitioner is a manufacturer of refined edible oil, and assessee on the file of the third respondent/Assessing Officer, under the provisions of the Tamil Nadu General Sales Tax Act, 1959 ('TNGST Act'). In this Writ Petition, the petitioner challenges the order passed by the second respondent, viz., the Commissioner of Commercial Taxes, dated 05.04.2006, by which, the clarification sought for by the petitioner was not granted, and it was held that, additional sales tax liability of an Agent, is independent of the liability of its principal.

3. The petitioner had approached this Court earlier, and filed W.P.No.1358 of 2006, praying for issuance of a writ of certiorarified mandamus to quash the order passed by the Commissioner of Commercial Taxes, dated 09.12.2005, and to direct the Commissioner to pass orders on the petitioner's representation. The Court, after taking into consideration the facts and circumstances of the case, allowed the Writ Petition, set aside the order passed by the Commissioner, dated 09.12.2005, and directed the representation of the petitioner to be considered within the time frame. The operative portion of the order reads as follows:-

> "4. Heard both sides. The learned counsel for the petitioner submits that the second respondent, namely, the Commissioner of Commercial Taxes, has a statutory duty as stipulated under Section 28-A (2) of the Tamil Nadu General Sales Tax Act to clarify any point concerning the rate of tax or the procedure relating to assessment and collection of tax and the petitioner has sought for clarification with regard to the procedure relating to assessment and collection of tax in the case of agent of a non-resident principal like it and the second respondent has passed one-line order stating that “no clarification can be issued”, without giving reasons and hence, the impugned order is liable to be set aside. The learned Government Advocate (Tax) fairly admits that the second respondent has got his statutory duty to clarify the procedure relating to assessment under Section 28-A (2) of the Act and the second respondent has not given any reasons in the impugned order. In view of the above, the impugned order is liable to be set aside.

> 5. The Writ Petition is allowed and the impugned order is set aside and the second respondent is directed to consider the representation of the petitioner dated 17.11.2005 in accordance with law and pass order thereon within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, W.P.M.P.No.1558 of 2006 is also closed."

4. Thus, in terms of the above direction, the second respondent was required to consider the petitioner's representation, wherein, the petitioner sought for clarification. On such direction being issued, the petitioner filed written submissions on 20th March, 2006. The petitioner, apart from the factual issues raised, placed reliance on a clarification issued in favour of M/s.Haldia Petro Chemicals on 14.01.2003. The petitioner furnished tabulated formats, in the written submission, pointing out the similarities between their case and that of M/s.Haldia Petro Chemicals. It was pointed out that, the only difference between the petitioner and M/s.Haldia Petro Chemicals is that, the petitioner has got branch at Tamil Nadu, whereas, the principal of the petitioner has no branch at Tamil Nadu. Therefore, the petitioner would point out that their case is far better case than M/s. Haldia Petro Chemicals. The petitioner, therefore, contended that, a similar clarification should be issued in their favour, as the object of Section 2(1) (aa) of TNGST Act and the explanation (1) is clear that, for the purpose of additional sales tax, the taxable turnover of more than one agent of non-resident principal should not be combined.

5. The second respondent, while passing the impugned order, has taken note of the submissions made by the petitioner, but, however, did not accept the case of the petitioner based on a decision of the Hon'ble Division Bench of this Court, in the case of India Beedi Leaves Limited Vs. State of Tamil Nadu, 1984 Vol.57 STC 190. In the said Tax Revision Case, the the assessee questioned the levy of additional sales tax on them for the assessment year 1975-1976. The assessee therein was doing business in beedi leaves at Vaniyambadi, and declared their total and taxable turnover for the said year. After a check of the accounts, the turnover of the assessee was finally determined, and in the assessment order, the Assessing Officer levied additional sales tax. The assessee took the matter on appeal, but, without success. The matter was then taken before the Tribunal, contending that, their turnover included the turnover relating to two of their principals, each of whose turnover was less than Rs.10,00,000/-, therefore, their

principals were not liable to pay additional tax, and if their principals were not liable to pay additional tax, the assessees were not also liable to pay additional tax. On the facts of the said case, the Hon'ble Division Bench held that, it is not open to the assessee therein to contend that their total turnover, comprised of the turnover, relating to their two principals, whose total turnover did not exceed Rs.10,00,000/- each, and since their principals are not liable to pay additional tax, the assessees are also not liable to pay additional tax. It was further held that the levy of additional tax under Section 2 (1) of the Tamil Nadu Additional Sales Tax Act, 1970 is consequential on the original assessment, and if the original assessment to sales tax has been made on a person, and that person's turnover exceeds Rs.10,00,000/-, then, the levy of additional tax is automatic under Section 2(1) of the Act.

6. On a reading of the impugned order, it is not clear, as to how, the decision in the case of India Beedi Leaves Limited would apply to the facts of the case on hand. That apart, the petitioner has pointed out certain similarities between themselves and M/s.Haldia Petro Chemicals, and sought for a clarification to be issued in their favour, as that of the clarification issued in favour of M/s.Haldia Petro Chemicals. Further, there was a direction issued by the Court to examine the matter as per the statutory provisions. But, all these aspects have not been gone into, by the second respondent while passing the impugned order. Thus this Court finds that the impugned order has not addressed the points/issues raised by the petitioner, hence, the same has to be set aside.

7. At this juncture, it may be of relevance to note the decision of the Tamil Nadu Taxation Special Tribunal, in the case of Siemens Ltd., Vs. State of Tamil Nadu, reported in [(1998) STC Vol 110 313], where, the very provision of Section 2 (1) (aa) of Tamil Nadu Additional Sales Tax Act, 1970, was the subject matter of challenge. In the said case, the principal was outside the State of Tamil Nadu, and the provision was struck down. The paragraphs are as hereunder:-

> " 27. To give effect to the said intention, we proceed to hold that clause (a) of sub-section (1) of section 2 of the principal Act, namely Act 14 of1970 is ultra vires and should stand deleted. We make it clear that we are striking down only clause (a) of section 2(1). We also make it clear that under section 2 (2) and 2 (3) the intention of the legislature not to pass on the burden of additional sales tax to the consumers and the reference to prosecution,

shall stand unaltered. So far as section 2 (1) (aa) as amended by Tamil Nadu Act 31 of 1996, the following words shall stand deleted, as obnoxious:

> (1) The words "in this State" after the words, "Principal selling or buying goods" in section 2 (1) (aa) as well as in Explanation to section 2 (1) (aa).
>
> (2) The words "other than a casual trader or agent of a non-resident dealer or a local brank of a firm or company situated outside the State" in section 2 (1) (aa).

If the above directions are carried out, the exemption granted up to Rupees one hundred crores will be equally applicable to all dealers. The O.Ps. are allowed and ordered in the above terms. There will no order as to costs."

8. In the instant case also, the petitioner's principal is situated outside the State of Tamil Nadu viz., in Andhra Pradesh, and they have no branch in the State of Tamil Nadu, and the petitioner is the direct agent of the principal, who is an assessee in Andhra Pradesh, and there is a consensus between the petitioner and the principal at Andhra Pradesh. Thus, on facts, the decision in the case of Siemens Ltd., (supra) would squarely apply to the facts of the present case.

9. Thus, following the decision of the Tamil Nadu Taxation Special Tribunal, in the case of Siemens Ltd., (supra), the Writ Petition is allowed and the impugned order is set aside and the matter is remanded to the third respondent/Assessing Officer, who shall redo the assessment in accordance with law, after affording an opportunity of hearing to the petitioner. No costs. Consequently, connected Miscellaneous Petition is closed.

sd/ms

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. Secretary to Government,
   The State of Tamil Nadu,
   Department of Commercial Taxes,
   Fort St. George, Chennai - 600 009.

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

3. The Deputy Commercial Tax Officer,
   Sriperumbudur Assessment Circle,
   Poonamallee,
   Chennai - 600056.

+1cc to Mr.M.Md.Ibrahim Ali, Advocate Sr.No.85527
+1cc to special Government Pleader SR.No.85864

SVI(CO)
sm:22.1.2018

Writ Petition No.27317 of 2007