IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.15876 of 2006 and
W.P.M.P.No.15657 of 2006 & W.V.M.P.No.38451 of 2016

M/s.Surbhit Impex Pvt. Ltd., rep. by its
Managing Director, Mahendra Kumar Jain,
through his power of attorney,
Krishna Kumar O.P.Sharma,
210, Mandvi Navjivan Building,
121/127, Kazi Sayed Street, Mumbai-400 003 ... Petitioner

Vs.

1.The Principal Commissioner &
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-600 005.

2.The Commissioner of Customs,
Custom House,
60, Rajaji Salai, Chennai-600 001.

3.The Assistant Commissioner of Customs,
(E-Auction), Customs House,
60, Rajaji Salai, Chennai-600 001.

4.M/s.Punjab & Sind Bank,
Yogeshwar Premises,
137/139, Kazi Sayed Street,
Masjid Bunder, Mumbai-400 003. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent in K.Dis/Lr.No.Acts Cell-IV/13106/2006 and quash the clarification dated 07.04.2006 issued therein and further direct the second respondent to adjudicate the issue relating to "situs of sale" in a manner prescribed under the provisions of the Central Sales Tax Act, 1956 and the Tamil Nadu General Sales Tax Act, 1959.

For Petitioner : Mr.B.Raveendran

For Respondents : Mr.S.Kanmani Annamalai,
Additional Government Pleader, for R1

Mr.K.S.Ramasamy,
Senior Panel Counsel, for RR2 & 3

No appearance for R4

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O R D E R

Heard Mr.B.Raveendran, learned counsel appearing for the petitioner, Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the first respondent and Mr.K.S.Ramasamy, learned Senior Panel Counsel appearing for respondents 2 & 3. Though the fourth respondent has been served and his name is printed in the cause list, none appears for the fourth respondent.

2.The short issue, which falls for consideration in the instant case is whether the clarification issued by the Commissioner dated 07.04.2006, is valid and proper. The impugned clarification reads as follows:

"COMMERCIAL TAXES DEPARTMENT

From To

Dr.T.Prabhakara Rao, I.A.S., Tvl.Surbhit Impex Private Ltd.,

Commissioner of Commercial Taxes, 9, Hafizan Building, 5th Floor,

Chepauk, Chennai-600 005. 129/131, Kazi Sayed Street,

Mumbai-400 003.

K.Dis/Lr.No.Acts Cell-IV/13106/2006, dated 07.04.2006

Sir,

Sub : Central Sales Tax Act 1956 - Tvl.Surbhit Impex Private Ltd., Mumbai - request for 'C' Form Guideline to Chennai Customs - Certain clarification - requested.

Ref : Petition dated 06.03.2006 from Tvl.Surbhit Impex Private Ltd.

The petitioners are informed that an auction sale concludes in the State itself and the seller has to pay the local tax. The question of filing of 'C' Form does not arise.

Sd/- T.Veerasekaran

For Commissioner of Commercial Taxes”

3.The petitioner’s case is that he participated in an E-auction conducted by the Customs Department for purchase of PVC Resin. The auction being an E-auction, the petitioner, whose registered office is in Mumbai, bid the auction at Mumbai. According to the petitioner, on being declared as a successful bidder, the petitioner remitted the bid amount along with 4% central sales tax for which, a receipt was issued by the Customs Department on 23.03.2006, based upon the Form 'C' declaration issued by the petitioner. Therefore, the petitioner’s case is that the impugned circular is not sustainable, because it occasioned movement of goods through E-auction, in which the petitioner participated from Mumbai and that having triggered the sale, the transaction is an interstate transaction and liable for tax at 4% under the Central Sales Tax Act, 1956, which has been remitted by the petitioner.

4.The contention raised by the petitioner is absolutely flawed for more than one reason. Firstly, as per the terms and conditions of auction as stipulated by the second respondent/Customs Department, on receipt of payment of sale value along with taxes and duties, delivery order will be issued indicating the delivery period and the period of delivery will be 7 calendar days counted from the date of Delivery Order by MSTC/date of release order by the Principal/Seller, which is the Customs Department. Before participating in the auction, the petitioner is required to inspect the material and satisfy by himself and no plea or misunderstanding and ignorance can be pleaded.

5.With regard to the submission of bids, there is a caution provided in the terms and conditions stating that the bidder shall be solely responsible for all consequences arising out of the bid submitted by him and no complaint/representation would be entertained. With regard to taxes and duties, the following is the specific condition in the terms and conditions:

> "Normally all sale will be treated as Local Sale & the Buyer shall have to pay Sales Tax as per the Local Sales Tax/Rules/Tariff of the concerned State applicable on the date of delivery. Unless otherwise specified, the sale against 'C' Form/CST will not be accepted."

6.The petitioner's case is that the sale is an interstate sale and therefore, liable for tax only at 4%. However, the conditions of auction clearly state that normally all sale will be treated as local sale and the buyer has to pay sales tax as per the Local Sales Tax Act viz., Tamil Nadu General Sales Tax Act, 1959, which was in vogue at the relevant point of time.

7.The exception, which has been drawn in the terms and conditions, is that if the sale transaction is otherwise specified, then the authority can accept Form 'C' declaration and if there is no specific provision made, that sale cannot be made against Form 'C' and the interpretation is that to qualify for such a sale, it should be deemed to have taken place in the course of interstate trade or if the sale or purchase occasioned the movement of goods from one State to another.

8.The petitioner's case is that he participated in the E-auction from Mumbai and therefore, this occasioned the movement of goods and therefore, it is an interstate sale. This submission cannot be accepted for the simple reason that though the petitioner participated in the E-auction, which is probably to facilitate the bidding process, the materials were inspected by the petitioner within the control of the Customs House, Chennai and the goods were delivered on payment of full sale value including taxes at Chennai. Merely because, one of the officers of the Customs Department, issued a receipt to the petitioner accepting 4% of the tax, that would not prevent the Commercial Taxes Department to take appropriate steps to recover the tax payable in the State of Tamil Nadu. It appears that only for that reason, when action was initiated by the assessing officer, the petitioner rushed to the Commissioner and sought for clarification. In the facts and circumstances, the clarification issued by the Commissioner is perfectly legal and valid and there is no reason to interfere with the same.

9.Accordingly, this writ petition is dismissed. Respondents 1 to 3 are directed to take immediate steps for recovery of the sales tax dues payable by the petitioner in respect of the said transaction. No costs. The interim stay already granted stands vacated. Consequently, W.P.M.P.No.15657 of 2006 is dismissed and W.V.M.P.No.38451 of 2016 is allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

abr

To

1.The Principal Commissioner &
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-600 005.

2.The Commissioner of Customs,
Custom House,
60, Rajaji Salai, Chennai-600 001.

3.The Assistant Commissioner of Customs,
(E-Auction), Customs House,
60, Rajaji Salai, Chennai-600 001.

+1cc to Mr.K.S.Ramasamy, Advocate, S.R.No.84083

+1cc to Mr.B.Raveendran, Advocate, S.R.No.84421

+1cc to the Government Pleader, S.R.No.84051

W.P.No.15876 of 2006

SV(CO)

RRK(22/12/2017)