IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.17656 of 2006 &
M.P.No.1 of 2006

M/s. Paramount Tea Marketing (SI) Pvt., Ltd.,
No.65/1/A Club Road, Coonoor. ... Petitioner

Vs.

The Commercial Tax Officer (FAC),
Coonoor. ... Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in his proceedings in Ref. No.468/2006 A1 and quash the order dated 30.05.2006 made therein.

For Petitioner : Mr.R.L.Ramani, Senior Counsel for Mr.B.Raveendran

For Respondent : Mr.S.Kanmani Annamalai, Additional Government Pleader

O R D E R

The petitioner is a company incorporated under the Indian Companies Act and registered with the respondent under the provisions of Tamil Nadu General Sales Tax Act, 1959 ("TNGST Act" in short). The order impugned in this Writ petition dated 30.05.2006, confirms the proposal made by the respondent vide notice dated 11.04.2006, proposing to cancel the petitioner's registration granted under the provisions of the TNGST Act.

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2.The respondent issued a show cause notice dated 11.04.2006, stating that the petitioner has taken separate registration under the TNGST and CST from 16.07.2002 and that the Department has been informed that even though their company are governed by a common management, they had taken separate registration to avoid payment of Additional Sales Tax. Therefore, the respondent stated that he proposed to lift the corporate veil as per the decision of the

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Supreme Court and cancelled the petitioner's registration and clubbed their turnover with the other company viz.,M/s. J Paramount Tea Marketing Private Limited.

3.The petitioner was granted time to file their objections. The petitioner had filed their objections and pointed out that the petitioner is a separate legal entity and carrying on independent business and the allegations made against them is not tenable. Various other factual/legal issues were also placed for consideration before the respondent. The respondent after receiving the objections has passed the impugned order rejecting the objections and confirming the proposal in the show cause notice dated 11.04.2006.

4.Heard Mr.R.L.Ramani, learned Senior Counsel for Mr.B.Raveendran, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent.

5.The petitioner's parent company was incorporated in Calcutta during 1987 and they are carrying on business as agents for Tea. The petitioner's company was incorporated in the year 2002 and they have obtained separate registration under the provisions of TNGST Act and CST Act. The petitioner has been given separate PAN number by the Income Tax Department and regularly returns have been filed.

6.The petitioner is also required to obtain license from the Tea Board of India to carry on the profession of being agent for Tea, thereby, the Commission, which they are entitled to, was also fixed by the Tea Board at 1% during 2002. The Tamil Nadu Government brought into force additional sales tax where the turnover exceeds Rs.10 Crores, the said company/dealer has to pay the additional sales tax. Therefore, the petitioner company was incorporated and a separate registration has been obtained from the Commercial Tax Department. This according to the respondent has been done solely for the purpose of avoiding payment of additional sales tax. Therefore, the respondent stated that he proposed to lift the corporate veil and ascertain as to what is the real intention of incorporating the petitioner company and hence, he proposed to cancel the registration.

7.The petitioner submitted their objections, but not convinced with the objections, the proposal was confirmed and the registration certificate issued to the petitioner was cancelled.

8.Before we go in to the correctness of the impugned order, what is important to note is that even assuming the impugned order is confirmed, the respondent would not be in a position to raise a demand on the petitioner for payment of additional sales tax. This is so, in view of Explanation I in Section 2(1)(aa). This has been

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specifically clarified by the Commissioner of Commercial Taxes, vide proceedings dated 29.07.2004, stating that the principals are liable to pay additional sales tax on the taxable turnover of all the agents within the state as per Explanation I to Section 2(1)(aa) of the TNGST Act. Therefore, the exercise attempted by the respondent by issuing a show cause notice dated 11.04.2006 is a futile attempt.

9.Be that as it may, the reason assigned in the impugned order for cancelling the petitioner's registration is incorrect. Even assuming the corporate veil is lifted, what it would reflect is a separate company, which has been incorporated under the Indian Companies Act and they have got themselves registered by the Income Tax Department separately and are paying income tax. That apart, the Commercial Taxes Department recognized the petitioner as a separate entity and on being satisfied granted registration certificate under the TNGST Act and CST Act. Thus, the petitioner being a separate legal entity is entitled to carry on business as per the memorandum of article of association of the company.

10.Thus, the conclusion arrived at by the respondent to state that the petitioner was incorporated only for the purpose of avoiding additional sales tax is of little avail and the formation of new company could have no impact on the levy and payment of additional sales tax, as this liability is on the seller/principal with effect from 01.01.2007, when the TNVAT Act, 2006 came into force. A sample bill raised by the grower/seller of Tea was produced before this Court, which shows that the seller is Tea Estates India Limited, the buyer is A.V.Thomas & Company Limited, and the agent is the petitioner herein. Thus, the impugned proceedings are totally flawed and therefore, liable to be set aside. For the above reasons, the writ petition is allowed and the impugned order is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

abr

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer (FAC),
Coonoor.

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