IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.07.2017

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

Writ Petition No.25259 of 2004
and
W.P.M.P.No.30726 of 2004

S.S.D. Oil Mills Co. Ltd.,
rep. by its Managing Director,
Mr. D. Ramamoorthy.

...Petitioner

Vs

1. The State of Tamil Nadu,
rep. by its Secretary,
Department of Hindu Religious,
Endowments and Commercial Taxes,
Fort St. George, Chennai - 9.

2. The Deputy Commercial Tax Officer,
Sriperumputhur Assessment Circle,
Varadarajapuram, Poonamallee,
Chennai - 56.

...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Declaration, declaring Section 2 (1) (aa) of the Tamil Nadu Additional Sales Tax 1970, passed by the first respondent, as null and void and unreasonable, arbitrary, and against law insofar as the levy of additional sales tax of the first Rs.Ten Crores of the Rupees @ 1% alone and to direct the second respondent to levy tax on the taxable turnover exceeding Rs.Ten Crores of the Rupees only.

For Petitioner : Mr. N. Md.Ibrahim Ali
for M/s.L.Maithili Associates

For Respondents: Mr. K.Venkatesh
Government Advocate

O R D E R

Heard Mr. M. MD. Ibrahim, the learned counsel appearing for the petitioner, and Mr. K.Venkatesh, the learned Government Advocate for the respondents.

2. The petitioner, who is an assessee on the file of the second respondent, under the provisions of the Tamil Nadu General Sales Tax Act, 1959, has approached this Court, by filing this Writ Petition, praying for issuance of Writ of Declaration to declare Section 2 (1) (aa) of the Tamil Nadu Additional Sales Tax 1970, passed by the first respondent, as null and void and arbitrary insofar as the levy of additional sales tax of the first Rs.Ten Crores of the Rupees @ 1% alone and to direct the second respondent to levy tax on the taxable turnover exceeding Rs.Ten Crores of the Rupees only.

3. This Court, on earlier occasion, considered the similar prayer, in the case of (M/s Blue Star Ltd., Vs. The State of Tamil Nadu, rep.by its Secretary to the Government, and another) in W.P.No.39351 of 2004, and allowed the Writ Petition, on 29.06.2016 in the light of the decision of the Court, in (Taher Ali Industries and Projects (P) LTD., v. State of Tamil Nadu And another). reported in (2012)47 VST 155 (Mad)] and the order passed in W.P.No.39351 of 2016 is extracted hereinbelow:-

> " Heard Mr.R.L.Ramani, learned Senior Counsel, instructed by Mr.P.V.Sudhakar, learned counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader for the respondents.
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> 2.The petitioner is a registered dealer with the second respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959. This Writ Petition has been filed to declare the provisions of Explanation V under Section 2(1) (aa) of the Tamil Nadu Additional Sales Tax Act introduced by Act 23 of 2002 as ultra vires and strike down the same.
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> 3. It is submitted by the learned Senior Counsel that the issue involved in this Writ Petition is squarely covered by the decision of this Court in the case of TAHER ALI INDUSTRIES AND PROJECTS (P) LTD., v. STATE OF TAMIL NADU AND ANOTHER [(2012) 47 VST 155 (Mad)].
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> 4. Mr.Manokaran Sundaram, learned Additional Government Pleader for the respondents does not dispute the said position.

5. Accordingly, the Writ Petition is allowed and the Explanation V under Section 2(1) (aa) of the Tamil Nadu Additional Sales Tax Act, 1970 is declared as ultra vires the Constitution of India, being beyond the competence of the State Legislature. No costs. Connected miscellaneous petition is closed. "

4. The above decision rendered by this Court, would squarely extend to the present case as well, and the only difference between the earlier case and the present case is that, in the earlier case, viz., in W.P.No.39351 of 2004, Explanation V under Section 2 (1) (aa) was sought for to be declared as null and void, and in this case, Section 2 (1) (aa) is sought to be declared as null and void.

5. In the light of the above referred decision, this Writ Petition is allowed and Section 2 (1) (aa) of the Tamil Nadu Additional Sales Tax 1970, passed by the first respondent, is declared as null and void, ultra vires the Constitution of India, being beyond the competence of the State Legislature. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

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To
1. The Secretary,State of Tamil Nadu,
Department of Hindu Religious,
Endowments and Commercial Taxes,
Fort St. George, Chennai - 9.

2. The Deputy Commercial Tax Officer,
Sriperumputhur Assessment Circle,
Varadarajapuram, Poonamallee,
Chennai - 56.
+1 Cc to Mr.N. Md Ibrahim Ali, Advocate sr 49177

Writ Petition No.25259 of 2004

SP(05/10/2017)