IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.10.2018
PRONOUNCED ON : 02.11.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.10607 and 10608 of 2008
and
M.P.Nos.1 and 1 of 2008

M/s.Iconet Patient Care (P) Ltd.,
No.83, Anna Salai,
Chennai - 600 002.

.. Petitioner in both W.Ps.

vs

The Deputy Commercial Tax Officer,
Chindadripet Assessment Circle.

.. Respondent in both W.Ps.

Common Prayer : Writ Petitions are filed under Article 226 of the Constitution of India, for issuance of a Writ of Ceritiorari to call for records of the respondent in his proceedings in CST. No.697797/02-03/A.G Audit and CST. No.697797/04-05 respectively and to quash the order of the dated 12.02.2008 made therein.

For petitioner : Mr.C.Bakthasiromoni
(in both W.Ps.)

For respondent : Mr.R.Haribabu
Additional Government Pleader
(in both W.Ps.)

COMMON ORDER

The above writ petitions have been filed to call for records of the respondent in his proceedings in CST. No.697797/02-03/A.G Audit and CST. No.697797/04-05 respectively and to quash the order of the dated 12.02.2008 made therein.

2.The petitioner is a registered dealer under the Tamil Nadu General Sales Tax Act, Act, 1959 and Central Sales Tax Act, 1956 in surgical ECG Electrodes effected inter-State sale to various institutions in terms of Notification No.II (1)/CTE/38/76 dated 20.12.1975 issued under Section 8(5) of the Central Sales Tax Act, 1956.

3.The petitioner had filed appropriate returns for the assessment years 2002-03 and 2004-05 and assessments were passed vide assessment Orders dated 18.05.2006 and 05.09.2008 respectively. The petitioner had availed the benefit of the Notification No.II (1)/CTE/38/76 dated 20.12.1975. Text of the notification read as under:

> "In exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Central Act.74 of 1956), the Governor of Tamil Nadu having been satisfied that it is necessary to do so in public interest hereby directs that in respect of scientific equipments and instruments (hereinafter referred to as "the said goods") the tax payable under the said Act by any dealer having his place of business in the State of Tamil Nadu, in respect of the sale by him from such place of business of the said goods in the course of inter-state trade and commerce to an education institution for use in the teaching of science, or to a hospital for its use, or to a laboratory or institution which carries on any research work for the promotion of a literary, scientific, artistic or educational object and which is not run with a motive of making profit, shall be calculated at give percent of the sale price of the goods so sold, if---
>
> (c) Such sale does not fall within sub-section (1) of the said section 8; and
>
> (d) the education institution, hospital, laboratory or institution as the case may be furnishes, to the dealer a certificate in form appended hereto and the dealer produces on demand such certificate before the assessing authority."

4.Section 8(5) of the Central Sales Tax Act, 1956 was amended with effect from 11.05.2002. For the purpose of the present Amended and unamended Section 8(5) (a) and (b) of the Central Sales Tax Act, 1956 are extracted as under:

Before 11.05.2002	After 11.05.2002
(5) Notwithstanding anything contained in this section, the State Government may if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette and subject to such conditions as may be specified therein direct,	(5) Notwithstanding anything contained in this section, the State Government may [on the fulfillment of the requirements laid down in sub-section (4) by the dealer] if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette and subject to such conditions as may be specified therein direct,
(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification;	(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, [to a registered dealer or the Government] from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in sub-section (1) or sub-section (2) as may be mentioned in the notification;

Before 11.05.2002	After 11.05.2002
(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in subsection (1) or sub-section (2) as may be mentioned in the notification.]	(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce 6 [to a registered dealer or the Government] by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in subsection (1) or sub-section (2) as may be mentioned in the notification.]

5.Thus, sale should be made "to a registered dealer or the government" to be eligible for the exemption. However, there was no corresponding amendment to Notification No.II(1) CTRE/38/76 dated 20.12.1975, under which assessment was claimed and allowed.

6.Notices dated 08.01.2008 and 18.01.2008 was issued to revise the Assessment Order dated 18.05.2006 for the Assessment Year 2002-03 and Assessment Order dated 05.09.2008 for the Assessment Year and 2004-05. It was the contention of the respondent that the sale to an unregistered dealers no longer qualified for exemption under Notification No.II(1)CTRE/38/76 dated 20.12.1975 in view of the above amendment.

7.The learned counsel for the petitioner submitted that notice to revise assessment vide CST No.697787/02-03 A.G was issued based on Audit though the notification remained untouched by the amendment to the Central Sales Tax Act vide Finance Act, 2002, with effect from 11.05.2002. The learned counsel for the petitioner further submits that the notification has not been withdrawn as it continued to be published repeatedly even during the succeeding assessment years.

8.Per contra, the learned counsel for the respondent submitted that the notification was no longer valid in the light of the amendment to the Act and there was no necessity for issuing consequential notification to repeal the notification in view of the amendment to the provisions of the Act. He further submitted that exemptions stood withdrawn with effect from 13.05.2002 in view of the amendments and prays for dismissal of the writ petitions.

9.I have gone through the affidavit and counter affidavit filed by the respective parties.

10.The only issue to be considered is whether exemption under notification for sale to an unregistered dealer remained unaffected by the amendment to Section 8(5)(a) and Section 8(5)(b) of the CST Act, 1956 or not?

11.Dealing with an identical issue a Division Bench of Hon'ble Mumbai High Court in Prism Cement Limited Vs. State of Maharashtra in its order dated 30.08.2012 in W.P. No.6475 of 2009 observed that the object of 2002 amendment was to over-come the decision of the Hon'ble Supreme Court in Shree Dig Vijay Cement Company Ltd., Vs. State of Rajasthan and Others (2000) (117) STC 395 (SC).

12.Clause 145 of the Notes on Clauses issued to the Finance Bill 2002 makes it clear that the object of amending Section 8 (5) of the CST Act by Finance Act 2002 is inter alia to make furnishing of form 'C' compulsory by the dealer except in respect of exempted goods and to withdraw powers of the State Governments to waive the requirement of 'C' form specified under Section 8(4) of the CST Act. In other words, as per the notes on clauses, Section 8(5) was amended by Finance Act with a view to withdraw the powers of the State Governments to waive the requirement of form 'C' specified under Section 8(4), so that compliance of Section 8(4) becomes mandatory in respect of sales of goods to the registered dealer or the Government covered under Section 8(1) aswp6475-09 except when exempted.

13.In State of Maharashtra suitable circulars had been issued clarifying the position as is evident from the reading of the said judgment. In para 53 and 54, the Hon'ble Division Bench of the Court further observed as under:

> "Therefore, when Section 8(5) as amended by Finance Act 2002 specifically refers to the power of the State Governments to grant total / partial exemption from the tax payable under Section 8(1) or 8(2), it

is not possible to accept the contention of the Revenue that after the 2002 amendment, the power of the State Government under Section 8(5) to grant total / partial 37 of 43 aswp6475-09 exemption is restricted only in respect of the transactions covered under Section 8(1).

Apart from the above, by retaining the words 'any person or class of persons' in the amended Section 8(5)(b) it is made clear that even after the 2002 amendment, the State Governments under Section 8(5) are also empowered to grant total / partial exemption in public interest in respect of inter-State sales to any person or class of persons covered under Section 8(2) of the CST Act. Thus, when Section 8(5) as amended by Finance Act 2002 specifically provides that the State Governments, subject to fulfiling the 38 of 43 aswp6475-09 requirements of Section 8(4) by a dealer, may in public interest grant total / partial exemption in respect of all sales of goods or class of goods as may be specified in the notification, which are made in the course of inter-State trade or commerce by any dealer or class of dealers as may be specified in the notification to a registered dealer or the Government covered under Section 8(1) or to any person or class of persons specified in the notification obviously covered under Section 8(2), it is reasonable to hold that the requirement of fulfilling the conditions of Section 8(4) would apply only to sales covered under Section 8(1) and not to sales covered under Section 8(2), because, fulfilling the requirements of Section 8(4) apply only in respect of sales covered under Section 8(1). We draw support for the above reasoning from the decision of the Apex court in the case of K.V. Kamath (supra) wherein it is held that where there are general words of description followed by enumeration of particular things and the general words apply to some things and not to others, then, by applying the principle of REDDEONDO SINGULA SINGULIS, it must be held that the general words would apply only to those thing to which they apply and not to other things.

The argument of the Revenue that the words 'any person or to such class of persons as may be specified in the notification' in Section 8(5)

If the legislature by inserting the words 'on the fulfilment of the requirements laid down in sub-section 4 by the dealer' had intended to restrict the power of the State Governments to grant total /

partial exemption only in respect of the tax payable under Section 8(1), then the legislature would not have made any reference to the power of the State Government to grant total / partial exemption from tax payable under Section 8(2). The very fact that the legislature even after the 2002 amendment has retained in Section 8(5), the words that relate to the power of the State Governments to grant total / partial exemption from tax payable under Section 8 (2), clearly show that the said amendment was not intended to affect the power of the State Governments to grant total / partial exemption from the tax payable in respect of the transactions covered under Section 8(2)."

14.Ultimately, in para 59 the Court held as under:

"59. For all the aforesaid reasons, we reject the self destructive argument of the Revenue that Section 8(5) of the CST Act as amended by Finance Act 2002, restricts the power of the State Governments to grant total / partial exemption in respect of inter-State sales covered under Section 8 (1) only. We further hold that even after the amendment of Section 8(5) by Finance Act 2002, the State Governments in public interest may subject to fulfillment of the requirements of Section 8(4) applicable to transactions covered under Section 8 (1), grant total / partial exemption from tax payable 42 of 43 aswp6475-09 on inter-State sales covered under Section 8(1) as also under Section 8(2) of the CST Act. Since the trade circulars impugned in the petition and also the impugned proceedings initiated against the petitioners proceed on the footing that after the 2002 amendment, the State Governments do not have power to grant total / partial exemption in respect of the transactions covered under Section 8 (2), the impugned trade circulars and the impugned notices issued under Section 38 of the BST Act are quashed and set aside."

15.The impugned orders have been passed only on the ground that the Notification is deemed to have been withdrawn. However, there is no document on record to show that the 1975 notification granting exemption had been withdrawn with effect from 13.05.2002 and therefore sale to unregistered dealer was no longer available or not exempted.

16.The State Government ought to have amended the notification or withdrawn it. Mere amendment to the provisions are not sufficient as the legislative policy reflected in the amended Act also has to be given effect by a corresponding amendment or withdrawal to the notification.

17.I am therefore of the view that the impugned orders are not sustainable. Normally, the State Government would have issued corresponding notification. However, there is no attempt to show whether such a notification has been issued or not.

18.Therefore the impugned orders are set aside and the case is remitted back to the original authority to pass a speaking order after giving the petitioner an opportunity to make additional submission.

19.It is made clear that the respondent shall issue appropriate corrigendum before calling the petitioner for hearing after giving details of notification if any repealing or withdrawing the Notification No.II (1)/CTE/38/76 dated 20.12.1975.

20.If however, no corresponding notification has been issued giving effect to the legislative policy in the 2002 amendment to Section 8(5)(a) and (b) of the Act, there will be no scope for passing fresh order. Under such an eventuality, the impugned orders passed will remain set aside and the assessment made earlier shall stand crystallized.

21.The respondent is directed to complete the proceedings within a period of eight weeks from the date of receipt of a copy of this order and bring a closure to this issue.

22.The above writ petitions thus stand disposed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Commercial Tax Officer,
Chindadripet Assessment Circle.

W.P.Nos.10607 and 10608 of 2008

RSK(CO)
GSP(27/11/2018)