IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.02.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.1547 of 2017

1.The Commissioner of Commercial Taxes,
Union Territory of Puducherry,
First Floor, 100 Feet Road,
Ellaipillaichavady, Puducherry 605 005.

2.The Commercial Tax Officer - I,
2nd Floor, Room No.31,
100 Feet Road, Ellaipillaichavady,
Puducherry - 605 005.

3.The Deputy Commercial Tax Officer,
(Intelligence Wing)
2nd Floor, Room No.31, 100 Feet Road,
Ellaipillaichavady, Puducherry - 605 005. .... Appellants/
Respondent 2 to 4

-Vs-

1.M/s.WS Retail Services Private Limited
Rep. by its Authorised Signatory Sukesh N.Shetty
No.13, Vallalar Salai, S.J.Modern Towers,
Kamaraj Nagar, Puducherry. ... 1st Respondent/
Petitioner

2.Union of India,
Through the Secretary, Ministry of Finance,
North Block, New Delhi - 110 001. ... 2nd Respondent/
1st Respondent

3.The Assistant Commissioner of Commercial Taxes,
LVO - 015, Vanijaya Therige Karyalaya -2,
Rajendranagara, Koramangala
Bengaluru - 560 047, Karnataka.

4.The Sales Tax Officer,
8th Floor, E-Wing,
New Vikrikar Bhavan, Old Nesbit Road,
Sardar Balwant Singh, Dhodhi Marg,
Near Dockyard and Byculla Railway Station,
Mazgaon, Mumbai - 400 010, Maharashtra.

5.The Value Added Tax Officer,
KCS Branch, 11th Floor, Sales Tax Building,
Delhi - 100 002.

6.The Excise and Taxation Officer,
Taxation Building, Hero Honda Chowk,
Gurgaon - 122 011. Haryana.

7.The Joint Commissioner (Sales Tax)
Bharasat Charge, 82/5, KNC Road,
Bharasat, 24 Prgs (North)
Kolkata - 700 124, West Bengal.

8.The Deputy Commissioner,
Khand - 7, Commercial Tax Department,
Commercial Tax Building, Collectorate,
RDC, Raj Nagar, Ghaziabad - 201 002
Uttar Pradesh. .... Respondents 3 to 8
Respondents 1,5 to 10.

(R2 to R8 given up vide order of Court dated 29.11.2017 made in W.A.No.1547/2017 by SMKJ and RSKJ)

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P No.3442 of 2016 dated 02.12.2016.

Prayer in W.P.No3442 of 2016:- Writ Petition filed under Article 226 of constitution of India, seeking for a writ of certiorari to call for the records comprised in impugned order in No.34090021317/ CTO-I/2015-16 dated 19.01.2016 on the file of the third respondent and to quash the same as arbitrary illegal and without jurisdiction.

For Appellants : Mr.T.P.Manoharan
Senior Counsel for
Ms.V.Usha,
Addl.Govt.Pleader (Pondy)

For Respondents: Mr.N.Venkataraman
Senior Counsel for Mr.K.Magesh for R1

J U D G M E N T

[Judgment of the Court was delivered by
K.K. SASIDHARAN,J.]

This intra court appeal is directed against the order dated 2 December 2016 in W.P.No.3442 of 2016, whereby and where under, the learned single Judge quashed the assessment order dated 19 January 2016 on the file of the Commercial Tax Officer I, Puducherry.

2. The Commercial Tax Officer, Puducherry, issued string of notices to the first respondent calling upon them to produce Rate Wise Stock Transfer of Commodities to Puducherry and Rate Wise sales to the customers of Puducherry. Similarly, notices were issued to file returns in accordance with the provisions of the Puducherry Value Added Tax Act, 2007. The first respondent, in its reply to the notice submitted that the transaction between the company and the customers in the Union Territory of Puducherry would not qualify to be a local sale so as to make them liable to pay tax in Puducherry. The Commercial Tax Officer after rejecting the explanation given by the first respondent passed an order of assessment on 19 January 2016.

3. The assessment order was challenged by the first respondent before the Writ Court primarily on the ground that transactions in question were inter-state sale and as such, there is no liability to pay local sales tax in Puducherry.

4. The writ petition was opposed by the appellants on two grounds, the first being the availability of an alternative remedy of appeal and the other being the alleged local sale at Puducherry.

5. The learned single Judge by placing reliance on various judgments delivered by the Hon'ble Supreme Court observed that a sale which occasions movement of goods from one State to another is a sale in the course of inter-state trade, no matter in which State the property in the goods passes. The learned single Judge opined that the fact that consignments after reaching Puducherry are kept in a depot established by the respondent would not amount to an act of storing the goods and effecting local sale. The assessment order was quashed by the learned single Judge, resulting in filing this appeal.

6. The learned Senior Counsel for the appellants contended that there is an obligation on the part of the trader to demonstrate that the sale in question was an "inter-state sale". The learned Senior Counsel took us through the assessment file and contended that the first respondent miserably failed to prove that the transaction was in the course of an inter-state sale. The learned Senior Counsel contended that the first respondent notwithstanding the fact that no local sale is made in the State of Punjab, registered as a dealer in the said state and submitted Nil returns. According to the learned Senior Counsel, the first respondent ought to have registered as a dealer in Puducherry. The learned Senior Counsel contended that in case no business is conducted at Puducherry, it would be open to the first respondent to file Nil returns. In any case, the first respondent cannot be heard to say that they would not produce documents before the Assessing Authority. The Assessing Authority was justified in passing the order of assessment.

7. The learned Senior Counsel for the first respondent by placing reliance on various decisions referred to by the learned single Judge in the order impugned in this appeal contended that the issue is covered by the earlier decisions and as such, the demand made by the Assessing Officer has no legal basis.

8.The learned Senior Counsel contended that a sale which occasions movement from Bangalore to Puducherry is a sale in the course of inter-State trade, no matter in which State the property in the goods passes. According to the learned Senior Counsel, the nature of sale would not depend upon the circumstances as to whether in which State the property in the goods passes. According to the learned Senior Counsel, the office of the first respondent at Puducherry acted only as a conduit through which the goods passes on its way to the buyer.

9. After hearing the parties, we have posed a question to the learned Senior Counsel for the first respondent as to why the documents sought for by the Assessing Officer were not furnished to him so as to take a decision as to whether the transaction was in the course of inter-state trade. The learned Senior Counsel initially submitted that the Assessing Officer has taken the details of all such sales and as such, there was no need to produce documents by the first respondent. When another query was posed as to whether the first respondent is prepared to produce the entire documents called for by the Assessing Officer, in case, one more opportunity is given, the learned Senior Counsel fairly submitted that all such documents would be produced. We have therefore directed the Assessing Officer and the first respondent to file individual affidavit agreeing for re-opening the proceedings subject to the condition that the first respondent would produce all the documents referred to in the notices issued by the Assessing Officer.

10. The Authorised Signatory of WS Retail Services Pvt. Ltd, the first respondent herein, in the affidavit dated 12 February 2018 agreed to file the entire documents indicated in the various notices issued by the Assessing Officer.

11. The Commissioner (CT), Commercial Taxes Department, Puducherry, in the Memorandum dated 19 February 2018 agreed to re-open the assessment and pass a fresh order after verifying the documents produced by the first respondent.

12. In view of the consensus arrived at among the parties, we are of the view that the assessment order deserves to be set aside.

13. The order dated 19 January 2016 on the file of the Commercial Tax Officer I, Puducherry, is set aside. We direct the first respondent to produce all the documents referred to in

the notices issued by the Assessing Officer within a period of four weeks from the date of receipt of a copy of this judgment. The Assessing Officer must verify the documents and decide as to whether transactions were in the course of inter-State trade. It is needless to mention that an opportunity of personal hearing should also be given to the first respondent before passing orders in the matter.

14. We make it clear that the question of law raised by the appellants and the correctness of the legal principles evolved by the learned single Judge shall be left open to be decided later in an appropriate proceedings.

15. The intra court appeal is disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To
1.The Commissioner of Commercial Taxes,
Union Territory of Puducherry,
First Floor, 100 Feet Road,
Ellaipillaichavady, Puducherry 605 005.

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2nd Floor, Room No.31,
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3.The Deputy Commercial Tax Officer,
(Intelligence Wing)
2nd Floor, Room No.31, 100 Feet Road,
Ellaipillaichavady, Puducherry - 605 005.
+1 CC TO MR.k.Magesh, Advocate SR. No.12640
+1 CC TO The government Pleader SR.NO.12910

W.A No.1547 of 2017

SSV(CO)
RMP(02/04/2018)