IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 25.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.18396 of 2004
and
W.M.P.No.21909 of 2004

Allied Ceramics Corporation,
Rep. by its Managing Partner
R.Usman Khan,
"Gems Court",
25, Khader Nawaz Khan Road,
Nungambakkam, Chennai - 600006. ...Petitioner

Vs

1. The Commercial Tax Officer,
   Nungambakkam Assessment Circle,
   Chennai.

2. The State of Tamil Nadu,
   Rep. by the Secretary to Government,
   Department of Commercial Taxes and
   Religious Endowments,
   Fort St.George,
   Chennai - 600009. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, declaring Serial No.9 of the Eleventh Schedule to the Tamil Nadu General Sales Tax Act, 1959, as introduced by Tamil Nadu Act 22 of 2002, with effect from 01.07.2002, as ultra vires Articles 14, 265, 286, 301 and 304(a) of the Constitution of India.

For Petitioner : Mr.N.Prasad

For Respondents: Mrs.Dhanamadri, GA

O R D E R

In an identical batch of writ petitions challenging the constitutional validity of provisions of the Act, as in the case of the present writ petition, a Division Bench of this Court in a decision reported in 2008 (18) VST 49 (Mad) in the case of

Sony India Ltd. vs Commercial Tax Officer, Egmore-II Assessment Circle, Chennai and others, had upheld the validity of the said provisions as against which, the matter was taken on appeal before the Hon'ble Supreme Court. Before the Hon'ble Supreme Court, one of the main contention raised was that once the importation stands completed, the goods lose their character of imported goods and consequently, there will be no difference between the locally manufactured goods and imported goods.

2. Taking note of such contention, the Hon'ble Apex Court had observed that the assessees in that case, ought to have proceeded to file appeals against the concerned assessment orders before the Appellate Authority, which was not done therein. The relevant observations of the Hon'ble Apex Court reads as follows:

> "The controversy has arisen because some of the times are imported from Japan by the Assessee whereas others are manufactured in India. As far as items manufactured locally in India, there is no dispute. The tax is levied at 12%. The dispute is basically confined to imported items in which the rate of tax is 20% (after 27.03.2002).
> In the original petition filed before the Tribunal, it was urged that once the importation stands completed, then the goods lose their character of imported goods and, consequently, there would be no difference between the locally manufactured goods and imported goods (see page 54 of the SLP Paper Book). One more contention raised by the assessee in its Original Petition before the Tribunal was:
>
> "It is submitted that similar goods manufactured in India and sold by other dealer like Samsung, LG etc. in Tamil Nadu are being taxed at 12% after 27.03.2002. However, the petitioners (assessee) herein alone are now required to pay tax at 20%. Presently, the Act imposes a higher rate of 20% on sales tax whereas other similar goods suffer sales tax at 12%."
>
> We do not wish to comment about the above contentions. Suffice it to state that these contentions would require adjudication, which has not taken place in the present case. Against the assessment orders, the assessee chose to move the Tribunal without exhausting statutory remedy under the Act. In our view, looking to the contentions advanced by the assessee, they ought to have proceeded to file appeals for each assessment year before the First Appellate Authority under the Act which they have failed to do. However,

> since an important question of law arises for determination and since the liability is likely to recur in future, we direct the appellant-assessee herein to prefer statutory appeal(s) within a period of four weeks. It is made clear that the First Appellate Authority will decide the said appeal(s) within a period of six months, uninfluenced by the observations made by the Tribunal as well as by the High Court in the impugned judgment. We express no opinion on the merits of the case. Whatever is stated hereinabove is only in the support of our order remitting the matter to the First Appellate Authority and that Authority shall not be bound by any of our observations mentioned hereinabove. The First Appellate Authority shall decide the matter on merits and it shall condone the delay, if any, in filing the appeals."

3. In the instant case, the petitioner herein had also challenged the virus of provisions of the TNGST Act, introduced by Tamil Nadu Act 22 of 2002, with effect from 01.07.2002. In normal circumstances, a prayer of this sort requires to be referred to the Division Bench, since the validity of the provisions are questioned. Nevertheless, since the Division Bench has already upheld the validity of the provisions and the Hon'ble Apex Court had also felt that the issue requires re-appraisal, the matter requires to be remanded. In the case of the petitioner herein, the assessment orders are yet to be passed and as such, remanding the matter to the Appellate Authority, as held by the Apex Court, does not arise. Nevertheless, if the petitioner herein is granted liberty to raise the contentions raised by him in the present writ petition before the Assessing Officer, the ends of justice would be secured.

4. In the light of the above observations, the matter is remanded back to the first respondent herein for fresh consideration. The petitioner is at liberty to raise fresh objections before the first respondent herein, within a period of 30 days from the date of receipt of copy of this order, irrespective of the fact as to whether the petitioner files his objections or not. On receipt of such objections, if any, the first respondent herein shall consider the same on its own merits and pass appropriate orders, after giving due opportunities to the petitioner. The first respondent shall endeavor to complete such exercise as expeditiously as possible, in any event, within a period of 3 months from the date of receipt of this order.

5. Accordingly, the writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Commercial Tax Officer,
Nungambakkam Assessment Circle,
Chennai.

2. The Secretary to Government,
Department of Commercial Taxes and
Religious Endowments,
Fort St.George,
Chennai - 600009.

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srg 21/08/2019