IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03-01-2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 30733 of 2005

Hitachi Home & Life Solutions (India) Ltd.,
(formerly known as Amtrex Hitachi Appliances Ltd.)
represented by its Regional Accounts
Manager South, Karthik Ananth,
47, II nd Main Road, R.A.Puram,
Chennai- 600 028. ... Petitioner

Vs

The Deputy Commercial Tax Officer,
Mandaveli Assessment Circle,
46, Greenways Road,
Chennai- 600 028. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari calling for the records on the file of the respondent herein in T/0760961/2001-02 dated 11.07.2005, and quash the proceedings of the Respondent herein in T/0760961/2001-02 dated 11.07.2005.

For Petitioner : Mr.K.A.Parthasarathi

For Respondent : Mr.M.Hariharan
AGP (Taxes)

O R D E R

The order dated 11.07.2005 issued by the respondent in respect of additional sales tax imposed for taxable annual turnover for the period 01.04.2001 to 31.10.2001 is under challenge in the present writ petition.

2. The learned counsel appearing on behalf of the writ petitioner, in nutshell, contended that the writ petitioner is a prompt prayer of TNGST as well as additional sales tax amount as per the rules and regulatio ns in force. The dispute arose in respect of the financial year 2001-2002. The ceiling fixed originally for the purpose of paying additional sales tax was

Rs.25 crores. In view of the fact that the petitioner was assessed for Rs.13,18,84,730/-, he was not made liable for payment of any additional sales tax with reference to the existing rule, which was prevailing prior to the amendment. The amendment was issued in respect of the ceiling fixed with effect from 01.11.2001. As per the amendment, limit of Rs.25 crores was reduced to Rs.10 crores. The amendment was implemented prospectively and therefore, the petitioner is liable to pay additional sales tax with prospective effect, which the petitioner had already paid with reference to the amendment. The learned counsel for petitioner further contended that the petitioner was assessed at Rs.13 crores and therefore, he had paid additional sales tax as assessed by the competent authority for the period from 01.11.2001 to 31.03.2002.

3. The learned Additional Government Pleader (Taxes) contested the case by stating that since the amendment was issued with effect from 01.11.2001, the additional sales tax is to be imposed for the entire financial year as a whole. Thus, there is no infirmity or irregularity in respect of the order passed by the respondent, imposing additional sales tax with reference to the annual taxable turnover of the writ petitioner.

4. The point to be considered by this court is as to whether the amendment issued on 01.11.2001 with prospective effect can be implemented retrospectively so as to cover the entire annual turnover for the purpose of levying additional sales tax to the writ petitioner.

5. Whenever an amendment is issued in this regard and more specifically the amendment is implemented with prospective effect, it is common law that the imposition of additional sales taxes is to be levied with effect from 01.11.2001 or with effect from the next financial year. In the present case on hand, the petitioner had already paid the additional sales tax with effect from 01.11.2001 onwards with reference to the annual turnover shown in the returns. This being the factum of the case, the interpretation as advanced by the learned Additional Government Pleader (Taxes) is incorrect and that the same cannot be accepted. Any amendment affecting the rights of the individuals with retrospective effect cannot be validated. Admittedly, in the case on hand, the amendment was issued with effect from 01.11.2001 onwards. The petitioner has already paid the additional sales tax with effect from 01.11.2001. Thus, the order impugned is infirm and not in accord with the established principles of law with reference to the implementation of amendment issued for levying additional sales tax to the assessee.

6. In this regard, learned counsel for petitioner relied on the judgment of this Court in the case of STATE OF TAMIL NADU v.

NATIONAL TIME CO. reported in [2011] 39 VST 247 (Mad). Relevant paragraph No.19 is extracted hereunder:-

> 'Having regard to the said position, the impugned order of the Tribunal as well as that of the assessing authority are liable to be set aside. While authority to pass further orders by keeping the taxable turnover of the respondent-assessee up to July 31,1996 in a sum of Rs.54,97,880 and calculate the tax at the rate of 1.5 per cent. On the sum of Rs.44,97,880 (i.e.), after deducting the first ten lakhs as provided under the proviso to sub-clause (i) of section 2(1)(a).'

7. Relying on the above judgment, and based on the established legal principles, this Court has no hesitation in coming to the conclusion that levy of additional sales tax on the petitioner for the entire financial year 2001-2002 is irregular and not in accordance with the amendment issued with effect from 01.11.2001. Thus the order impugned passed by the respondent in proceeding No.T/0760961/2001-02 dated 11.07.2005 is quashed.

8. The writ petition stands allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tar/ssb

To

The Deputy Commercial Tax Officer,
Mandaveli Assessment Circle,
46, Greenways Road,
Chennai- 600 028.

+1cc to M/s.N.Inbarajan, Advocate sr.no.663
+1cc The Special Government Pleader sr.1139

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nr 04/03/2019