IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case (Revision) No.24 of 2012

M/s.Electro Steel Castings Limited,
98/99, Luz Church Road,
Chennai-4. ... Appellant

-vs-

The State of Tamil Nadu (represented by
The Deputy Commissioner (CT),
Chennai [south]division. ... Respondent

Tax Case (Revision) filed under Section 38 of the Act, against the order of the Sales Tax Appellate Tribunal (Main Bench), Chennai dated 30.05.2011 and passed in T.A.No.388/05.

For Appellant : Mr.J.R.Ramesh

For Respondent : Mr.M.D.Shaffiq
Special Government Pleader(Tax)

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JUDGMENT

(Order of this Court was delivered by T.S.Sivagnanam, J.)

This Tax Case Revision has been filed by the petitioner/dealer under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 challenging the order passed by the Tamil Nadu Sales Tax Appellate Tribunal(MB) Chennai dated 30.05.2011.

2. Heard Mr.J.R.Ramesh, learned counsel for the appellant and Mr.M.D.Shaffiq, learned Special Government Pleader for the respondent.

3. The Tax Case Revision has been admitted vide order dated 13.07.2012 on the following substantial question of law:

> *(i) Whether, in facts and circumstances of the case and in law, the tribunal ought to have held that there was no law providing for the levy of additional sales tax for the period from 01.04.1999 to 18.06.1999 in respect of dealers like the petitioners whose head office was situated outside the State of Tamil Nadu.*
>
> *(ii) Whether, in facts and circumstances of the case and in law, the Tribunal ought to have held*

that Section 2(1)(aa) of the Act, as substituted by Act 23/98, was not applicable to the petitioners as the head office of the petitioners was situated outside the State of Tamil Nadu as it was specifically made applicable only to dealers whose head office was situated inside the State of Tamil Nadu.

(iii) Whether, in facts and circumstances of the case and in law, the Tribunal ought to have held that the petitioners were liable to pay additional sales tax only from the period from 18.06.1999 taking into consideration only the taxable turnover of the petitioners for the period from 18.06.1999 to 31.03.2000.

(iv) Whether, in facts and circumstances of the case and in law, the Tribunal was justified in holding that Act 37/99 was only a more reformed form of Act 23/98 which removed certain mischief in Act 23/98 thus making the Act 23/98 more fully comprehensive.

(v) Whether, in facts and circumstances of the case and in law, the Tribunal ought to have considered and applied the contentions raised in the petition for additional grounds and explanations filed in TMP.No.219/09, with reference to the appeal filed by the petitioners in T.A.No.388/05, in so far the same related to the liability of the petitioners to pay additional sales tax for 1999-2000.

4. The short question which falls for consideration is whether the appellant/dealer is liable to pay additional sales tax pursuant to the amendment vide the Tamil Nadu Additional Sales Tax Act [amendment Act], from the date on which it was published in the Tamil Nadu Government Gazette.

5. The assessment year under consideration is 1999-2000. The petitioner are manufacturers of CI Spun Pipes and D.I. Fittings and reported a total and taxable turnover of Rs.27,37,88,075/- and Rs.27,33,69,140/- respectively. In the annual return in Form A1 filed for the assessment year under consideration, the Assessing Officer while completing the assessment vide an order dated 28.03.2002 levied additional sales tax at 1.5% on the taxable turnover and completed the assessment. The petitioner preferred appeal to the Appellate Assistant Commissioner (CT), Kancheepuram (First Appellate Authority) challenging the levy of additional sales tax.

6. The petitioner filed appeal to the First Appellate Authority challenging the quantum assessment as well which includes the levy of additional sales tax. The First Appellate Authority vide order dated

05.03.2004 dismissed the appeal and while doing so, directed the Assessing Officer to take note of the decision in the case of **Murugan Timbers.** Both the petitioner as well as the Revenue preferred an appeal before the Tribunal. The Tribunal by the impugned order, dismissed the case of the petitioner. The correctness of this order is challenged by the petitioner/dealer only with regard to the levy of additional sales tax and not on the other portions of the assessment order. The Tribunal while rejecting the petitioner's case, held that there cannot be vaccum for the period from 01.04.1999 to 20.06.1999 and Section 2(1)(aa) inserted vide Act 23/1998 continues to hold the field. In coming to such conclusion, the Tribunal interpreted the provisions of the Act, the amendments and rejected the appeal.

7. The argument of the learned counsel for the appellant is two fold, Firstly, it is contended that the amendment to Section 2(1)(a) with effect from 21.06.1999 vide Act 37/1999 cannot be stretched prior to the said date. In other words, it is contended that the for the period from 01.01.1999 to 20.06.1999 there was no liability for the petitioner to pay additional sales tax and therefore the turnover for the period from 21.06.1999 only should be reckoned and if the same is done, the petitioner turnover will be less than the threshold limit of

Rs.25 Crores and consequently there can be no liability. The second contention is that the assessment year should be split up into two parts i.e., for the period from 01.04.1999 to 20.06.1999. When there was no liability and from the period from 21.06.1999 to 31.03.2000, when additional sales tax was made applicable to dealers like the appellants and even if it is so, the turnover having not exceeded, the threshold limit and no additional sales tax is paid.

8. We have elaborately heard the learned Additional Government Pleader for the respondent. We need not labour much to decide the question, as identical question was decided by the Hon'ble Division Bench of this Court in the case of **Philips India Limited Vs. The Assistant Commissioner (CT) [W.P No.3739 of 2002]** dated 18.05.2004. The said writ petition was filed to quash the order passed in O.P.No.584 of 2001 dated 28.09.2001 which confirmed the assessment order dated 01.08.2001 and demanded additional sales tax. On a reading of the judgement, we find that identical argument was placed before the Hon'ble Division Bench in the said case and the argument was rejected in the following terms.

> *"8. Even assuming that there was no liability to pay and there was no provision regarding payment of additional*

sales tax between 01.04.1996 to 31.07.1996, the annual turnover of the petitioner for the assessment year 1996-97 was admittedly more than Rs.100 crores. It is immaterial that the taxable turnover for the period from 01.08.1996 to 31.03.1997 did not exceed Rs.100 crores. Even assuming that the liability to pay additional sales tax arose only with effect from 01.08.1996, the contention that the taxable turnover after the said date alone could be considered is also tenable. The Assessing Officer was justified in coming to a conclusion that the taxable turnover for the period between 01.04.1996 and 31.03.1997 being more than Rs.100 crores, the petitioner was liable to pay additional sales tax even as per the amended provision as contained in Section 2(1)(aa)."

9. The above decision amply makes it clear that the liability to pay additional sales tax is to be collected on the total taxable turnover of the dealer for the entire year. Therefore, the contentions advanced by the petitioner that the year should be split into two, is impermissible as we cannot add words to a statute which are clear and unambiguous.

10. In the case of the **Commissioner of Commercial Taxes Vs. S.S.D.Oil Mills Co.Ltd., [W.P.No.1060 of 2005] dated 17.03.2001,** the Hon'ble Divison Bench took a similar decision as in the case of **Phillips India** and the operative portion of the order reads as follows:

> *"6.......*
> *The Assessing Officer calculated the additional sales tax at the rate of 2% on the taxable turnover for the whole of the year. Having regard to the above, the Tribunal held that for the period 01.04.2001 to 31.10.2001, the turnover exceeded Rs.25 crores at 1.5% of the taxable turnover and with effect from 01.11.2001, the slab has to be followed as per the amendment under Act 13 of 2001, when the taxable turnover exceeded Rs.10 crores i.e., at 1% of the taxable turnover and where the taxable turnover exceeded Rs.25 crores and did not exceed Rs.50 crores, the taxable turnover was assessable at the rate of 1.5% of the taxable turnover. Going by the decision of this Court, taking the entire year's turnover, the liability upto the date of the amendment will have to be worked out at the rate prevailing upto the date of amendment and for the period subsequent to the amendment, the rate prevailing therein. By taking the taxable turnover for the whole year, as the taxable turnover attracted the charge, the necessity to pay the additional sales tax*

shall be at the relevant rate prevailing as per the unamended law upto the unamended period and post amendment period would be covered by the rate fixed under the amended law. Applying the said decision, the assessee's turnover for the entire year has to be first worked out and upto the cut-off period i.e., upto 31.07.2006, the applicable rate has to be worked out as per the amended provision and beyond that, for the post-amendment period, the applicable rate under the amended provision has to be arrived at."

11. In the case of **State of Tamil Nadu Vs. National Time Co.(Mad) [reported in (2011) 39 VST 247 (Mad)],** the decision of **Commissioner of Commercial Taxes Vs. S.S.D.Oil Mills Co.Ltd., [W.P.No.1060 of 2005] dated 17.03.2001** appears to have not been brought to the notice of Hon'ble Division Bench. Infact, we do not find much conflict in the said decision to that of the decisions in Philips India and also in National Time Co., the Court held that the taxable turnover for the whole finance year has to be reckoned. Therefore, to that extent, the decision is in tune with for the decision of the Philips India and S.S.D Oil Mills. The decision in the case of **R.K.Jain & Brothers Vs. The State of Tamil Nadu [reported in (2013) 59 VST 421 (Mad)]** followed the decision of National Time Company.

12. Thus, in our considered view, the correct legal position is what has been laid down in Philips India and S.S.D Oil Mills Company Ltd, and the Assessing Officer needs to apply the said decision and take a fresh decision on merits and in accordance with law. Accordingly, the substantial questions of law are answered against the petitioner in terms of the decisions in the case of Philips India and S.S.D Oil Mills Company Limited and the following Tax Case Revision stands disposed of by remitting the matter to the Assessing Officer and calculate the liability of additional sales tax which according to the learned counsel for the petitioner has already been remitted under protest.

(T.S.S., J.) **(V.B.S., J.)**
04.02.2019

To

The State of Tamil Nadu (represented by
The Deputy Commissioner (CT),
Chennai [south]division.

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

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