

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.01.2020

Pronounced on : 27.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.34294 of 2013
and MP.No.1 of 2013

Proteck Machinery Private Ltd.,
Represented by its Manager
(Accounts and Finance),
Jude Christopher,
No.15, Medavakkam Road,
Shollinganallur,
Chennai - 600 119. ... Petitioner
Cause title amended vide order dated 17/12/2019
made in WMP No.35561/2019 in WP 34294/2013 by CSNJ

vs.

The Assistant Commissioner (CT)
Thiruvanniyur Assessment Circle,
Chennai - 600 090. ... Respondent

Prayer: Writ petition is filed under Article 226 of the
Constitution of India to issue a Writ of Certiorarified
Mandamus to call for the records on the files of the
respondent herein in his CST No.632017/2007-08 dated
25.10.2013 and to quash the same with the direction to the
respondent of levy of rate of tax at 4% treating the sales as
falling under Serial No.25 of Part B of the First Schedule to
the TNVAT Act, 2006.

For Petitioner : Mr.Karthik Sundaram
For Respondent : Mr.M.Hariharan

ORDER

The petitioner has challenged the impugned assessment
order dated 25.10.2013 bearing reference CST.No.632017/2007-08
Passed by the respondent.

2. By the impugned order the respondent has demanded tax
on goods manufactured and sold by the petitioner under
Residuary Entry No. 69, Part C to the 1st Schedule of the Tamil
Nadu VAT Act, 2006 on Inter State sale effected by the
petitioner.

3. According to the petitioner, the goods manufactured by it and sold in the course of inter-state trade and commerce are leviable to tax under Section 6 of the CST Act, 1956 read with Section 8 (1) and (2) at 4% as was applicable to capital goods under in Entry No. 25, Part B of the 1st Schedule of the Tamil Nadu VAT Act, 2006.

4. Petitioner submits that the reasoning in the impugned order is flawed in as much as the goods manufactured and sold by the petitioner were "capital goods" as defined in Section 2 (11) of the Tamil Nadu VAT Act, 2006 and that the petitioner has been wrongly subjected to a higher rate of tax under the Residuary Entry No. 69 to Part C to the 1st Schedule of the Tamil Nadu VAT Act, 2006 at 14.5%.

5. The learned counsel for the petitioner submits that the issue is also no longer res integra in as much as the Gujarat High Court in its order in State of Gujarat versus Reliance Industries Ltd., has answered the issue in their favour.

6. The learned counsel for the petitioner also submitted that though the petitioner has an alternate remedy since there are no disputed questions of fact and only legal issues were to be settled or decided, writ courts under Article 226 of the Constitution of India can entertain and decide such writ petitions.

7. In this connection, the learned counsel for the petitioner relied on the decision of the Court rendered in Deputy Commisssioner of Central Excise Vs Suhail & Co. 2016 (42) STR 625 and the decision of the Supreme Court in AIDEK Tourism Services Pvt. Ltd Vs Commissioner of Customs 2015 (318) ELT 3 (SC).

8. The learned counsel for the petitioner also relied on the following decisions:-

- i).State of Gujarat vs. Reliance Industries Limited, MANU/GJ/2376/2016
- ii)Engine Valves vs. UOI (1993) 90STC 84
- iii) Bashir Oil Mills and another vs. Maharashtra Sales Tax Others Tribunal, MANU/MH/0402/1992
MANU/MH/0402/1992
- iv) TVS Motor Company Ltd., vs. The State of Tamil Nadu and Ors. (Civil Appeal Nos.10560-10564/18
- v) Mr.Raza Textiles Ltd., Rampur v. The Income Tax Officer, Rampur, AIR 1973 SC 1362
- vi) Whirlpool Corporation v. Registrar of Trade Marks (1998) 8 SCC 1

vii) Harbans Lal Sahnia v. Indian Oil Corporation Ltd., (2003) 2 SCC 107

viii) Tata Engineering and Locomotive Co., Ltd., v. The Asst. Commr. Of Commercial Taxes (1967) 2 SCR 751

ix) Mohinder Singh Gill v. Chief Election Commissioner (1978) 1 SCC 405

x) Schwing Stetter (India) Private Limited versus Commissioner of Commercial Taxes, order dated 20.09.2019 passed by this Court in W.P.Nos.26452 & 26458 of 2019.

9. The learned counsel also submitted that the decision of the Division Bench of this court in Schwing Stetter (India) Private Limited versus Commissioner of Commercial Taxes referred to supra has upheld the validity of the definition of the expression "capital goods" in Section 2 (11) of Tamil Nadu VAT Act, 2006 and the issue as to whether goods in question in those cases are to be considered as capital goods has been left open.

10. Per contra, the learned Additional Government Pleader (Taxes) submits that the Advance Ruling Authority has already issued a clarification in ACAAR 104/4/12-13 and therefore such clarification as far as the rate of tax in respect of the goods is binding on them in terms of Section 48-A of the Tamil Nadu VAT Act, 2006. It is submitted that the writ petition was not only liable to be dismissed as petitioner has an effective and alternative remedy but also the issue is covered against the petitioner in the case of Schwing Stetter (India) Private Limited versus Commissioner of Commercial Taxes referred to supra

11. I have considered the arguments of the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) for the respondents.

12. Though the petitioner has an alternate remedy before the Appellate Commissioner, the petitioner has chosen to file a writ petition and has relied upon the decision of the Court in Deputy Commissioner of Central Excise versus Sushil & Co., cited supra by stating that since there are no disputed questions of fact and only law and therefore this Court can entertain the writ petition and pass orders. This submission of the petitioner appears legitimate.

13. Since the issue involved in the present writ petition is confined to rate of tax on the goods manufactured and sold by the petitioner in the course of inter-state sale, I shall take up the issue and decide the case.

14. In this case, the petitioner had earlier filed W.P.No.5189 of 2013 and challenged the notice calling upon the petitioner to pay the disputed tax. The said writ petition was dismissed by this Court by its order dated 06.03.2013 with a direction to the petitioner to participate in the adjudicatory proceedings under the provisions of the Act. The petitioner thereafter submitted its reply and requested the respondent to drop the proceeding which has culminated in the impugned order.

15. The petitioner had earlier also filed a batch of writ petition along with others in W.P.No. 24730 and 24731 of 2010 and W. P.No. 8759 to 8762 of 2010 which were disposed by an order dated 5.4.2016 in the lead case of Schwing Stetter (India) Private Limited versus Commissioner of Commercial Taxes referred to supra. Thereafter, the petitioner and others filed a review petition to review the above order before this court which was also dismissed by an order dated 27.4.2018.

16. The expression "capital goods" is defined in Section 2 (11) of the Tamil Nadu Vat Act, 2006 and reads as under:-

"capital goods" means :-

(a) plant, machinery, equipment, apparatus, tools, appliances or electrical installation for producing, making, extracting or processing of any goods or for extracting or for bringing about any change in any substance for the manufacture of final products;

(b) pollution control, quality control, laboratory and cold storage equipments;

(c) components, spare parts and accessories of the goods specified in (a) and (b) above;

(d) moulds, dies, jigs and fixtures;

(e) refractors and refractory materials;

(f) storage tanks; and

(g) tubes, pipes and fittings thereof;

used in the state for the purpose of manufacture, processing,

packing or storing of goods in the course of business excluding civil structures and such goods as may be notified by the Government;"

17. The definition of " capital goods" is not precise. As per Sub-Clause (a) to Section 2(11) of the TN VAT Act, 2006, " capital goods" means plant, machinery, equipment, apparatus, tools, appliances or electrical installation for producing, making, extracting or processing of any goods or for extracting or for bringing about any change in any substance for the manufacture of final products.

18. The definition also states that the goods should be used in the state for the purpose of manufacture, processing, packing or storing of goods in the course of the business excluding civil structures and such goods as may be notified by the Government.

19. Previously, under Section 3(5) of the TNGST Act, 1959 there was a special dispensation for procuring goods mentioned in the 8th Schedule at 3% for manufacturing purpose within the factory.

20. A provision similar to Section 3(5) of the TNGST Act, 1959 is however conspicuously absent in the Tamil Nadu Vat Act, 2006. Reason for such absence in the Tamil Nadu VAT Act, 2006 is not difficult to answer as input tax credit is available under Section 19(3) of the Act to a registered dealer on the tax paid on the purchase "capital goods" in the manner prescribed.

21. As per Section 19 (3), every registered dealer, shall be allowed input tax credit in the prescribed manner on the tax paid on the purchase of capital goods for use in the manufacture of taxable goods.

22. The necessity for incorporating Entry 25 to Part B to the 1st Schedule to Tamil Nadu Vat Act, 2006 may appear at the first glance unnecessary as already input tax credit has been made available under Section 19(3) of the Tamil Nadu Value Added Act, 2006 to a registered dealer on the tax paid by a seller under the 1st Schedule to Tamil Nadu Vat Act, 2006 .

23. Perhaps the reason for incorporating Entry 25 to Part B to the 1st Schedule to Tamil Nadu Vat Act, 2006 was to promote all manufacturing industries in the State to procure goods at 4% in terms of Entry 25 to Part B to the 1st Schedule of the Tamil Nadu Vat Act, 2006 as otherwise they would have been liable to pay tax at a higher rate of tax as prescribed in the Residuary Entry 69, to Part C to the 1st Schedule of the Tamil Nadu Value Added Act, 2006.

24. In my view, presence of Entry 25 to Part B to the 1st Schedule to Tamil Nadu Vat Act, 2006 can be explained and only justified for the above reasons as otherwise the said entry is of no relevance except for payment of tax at higher rate for it to be availed as an input tax credit for use in the factory for manufacture within the state.

25. The Division Bench in M/S.Schwing Stetter (India) Pvt. vs. The Commissioner of Commercial Tax Officer has not only upheld the validity of the definition of "capital goods" as defined in Section 2(11) of the TN VAT Act, 2006 but has also answered the issue on merits in its order dated 5.4.2016 and permitted person who had already suffered order to file a statutory appeal. Therefore, the Petitioner should have filed a statutory appeal against the order or in the alternative approached the Hon'ble Supreme Court in case it was aggrieved by it. Instead, has filed the present Writ Petition.

26. It may be useful to refer to the following passages from the above decision of the Division Bench in M/S.Schwing Stetter (India) Pvt.vs.The Commissioner of Commercial Tax Officer:

26. Keeping the above fundamental principles in mind, if we have a look at the first ground of attack, it can be seen easily that the same cannot be sustained. The State Legislature is entitled to treat a particular item or good as a capital good, when used within the State. It may not even be a capital good in common parlance. Similarly, a particular good which is treated as capital good in all other States, may be treated differently by one State, provided the law making it so, passes the tests indicated above.

27. As rightly pointed out by Dr.Anita Sumanth, learned Special Government Pleader (Taxes), Sub-section (3) of Section 3 of the TNGST Act, 1959, used the expression "inside the State" and Sub-Section (5) of the very same Section used the expression "use in his factory site situate within the State". The relevant parts of Sub-sections (3) and (5) of The TNGST ACT, 1959 read as follows:-

"(3) Notwithstanding anything contained in sub-section(2), (2-A) or (2- C), but subject to the provisions of sub-section (1), the tax payable by a dealer in respect of sale of any goods including consumables, packing materials and labels, but excluding plant and machinery, to another dealer for use by the latter in the manufacture, and assembling, packing

or labeling in connection with such manufacture inside the State, for sale by him of any goods other than ethyl alcohol, absolute alcohol, methyl alcohol, rectified spirit, natural spirit and denatured spirit, goods falling under Part A of the Third Schedule, goods falling under item 1 of the Sixth Schedule and arrack, shall be at the rate only three percent on the turnover relating to such sale.

(5) Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), the tax payable by a dealer in respect of sale of any of the goods mentioned in the Eighth Schedule to any other dealer for installation of, and use in his factory site situate within the State for the manufacture of any goods shall be at the rate of three per cent on the turnover relating to such sale;

28. As rightly pointed out by Dr. Anita Sumanth, learned Special Government Pleader (Taxes), it is not open to this Court to treat any word or expression used in any statute as redundant or superfluous. The reliance placed by the learned Special Government Pleader in this regard on the decision of the Supreme Court in *Grasim Industries Ltd. v. Collector of Customs* [128 STC 350], is well-founded. Paragraph 9 of the said decision which clinches the issue in this regard, maybe usefully extracted as follows:

"9. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the Legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the Legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the

Legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the Legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in *Crawford v. Spooner* [(1846) 6 Moore PC 1] "we cannot aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well-settled and reference to few decisions of this Court would suffice. [See: *Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests, Palghat and Anr.* (AIR 1990 SC 1747), *Union of India and Anr. v. Deoki Nandan Aggarwal* (AIR 1992 SC 96), *Institute of Chartered Accountants of India v. Price Waterhouse and Anr.* (1997 (6) SCC 312) and *Harbhajan Singh v. Press Council of India and Ors.* (JT 2002 (3) SC 21)]."

27. Therefore, the contention of the petitioner that the words "used in the State" appearing in Section 2(11) have to be ignored or treated as redundant or superfluous is completely contrary to the law laid down by the Supreme Court.

29. he Relying upon the decision of the Supreme Court in *CCE, Coimbatore v. Bashir Mills Ltd.* [(2011) 97 SCR 541], it is contended by Ms. Aparna Nandakumar, learned counsel for one of the petitioners that the expression "capital goods" has to be given a very wide connotation and that there cannot be an artificial restriction. But, we are unable to accept the said submission. In *Bashir Mills*, the Supreme Court was concerned with Rule 57-Q of the Central Excise Rules, 1944, which contain the

definition of the expression "capital goods" under the Explanation to the Rule. It was made clear therein that the said definition was for the purposes of that Rule. The definition clauses in every rule or statute has to be construed only with reference to that rule or statute and cannot be imported to any other rule or statute.

30. Therefore, the issue is not as to how the very same goods become capital goods when used in the State, but become different goods when used outside the State. The Sales Tax Law of the past and the Value Added Tax Law of the present seek to treat goods of a particular description differently, for the purpose of determining the incidence of tax. This is not prohibited by law and hence, the first ground of challenge has to fail.

Individual grievances

73. Apart from the challenge to the validity of Section 2(11), some of the petitioners have also projected certain individual grievances. These individual grievances can be grouped together under the following categories:

- (i) those whose products are not treated as capital goods at all, despite the fact that they are used in the manufacture of other products, and
- (ii) those who sell goods to the Governments or Government undertakings or Government companies of other States, who would not hold a registration as a dealer under the Central Sales Tax Act, 1956.

74. Insofar as the first category of cases are concerned, we are of the considered view that Section 2(11) cannot be read in isolation. We have already extracted the provision. It is no doubt an exhaustive definition and it contains two distinctive parts. Clause (a) of Section 2(11) is one part. Clauses (b) to (g) comprise the other part. If the good in question falls under any one of the categories mentioned in Clause (a), such as plant, machinery, equipment, apparatus, tools, appliances or electrical installation, it would be treated as capital good, provided it is used for producing, making, extracting or processing of any

goods or for extracting or for bringing about any change in any substance for the manufacture of final products. If the good in question falls under any one of the categories mentioned in Clauses (b) to (g), it should be used for the purpose of manufacture, processing, packing or storing of goods in the course of business. But, civil structures and such goods as may be notified by the Government are excluded.

75. Though many of the other expressions used in Section 2(11) are not further defined in the Act, the expression "manufacture" is defined in Section 2(27) as follows:

"manufacture" with its grammatical variations and cognate expressions means producing, making, extracting, altering, ornamenting, finishing, assembling or otherwise processing, treating or adapting any goods and includes any process of goods which brings into existence a commercially different and distinct commodity but does not include any activity as may be notified by the Government."

76. Therefore, any equipment, appliance, or apparatus, which is used for producing, making, altering, assembling, or processing of any goods, will be a capital good, as it would satisfy the definition under Section 2(27). Any process of goods which brings into existence, a commercially different and distinct commodity, is also manufacture and hence any equipment that is used to process goods, so as to bring into existence a commercially distinct and different commodity, would be a capital good. That such a good should also be used in the State, so as to satisfy the requirements of Section 2(11), is altogether different.

77. Once the above tests are applied, it would be clear that concrete mixtures, fermenters, paper cup machinery, coir and curling machine, welding machinery parts, printing machinery parts, cold storage equipment etc., which the petitioners in some of the writ petitions are dealing in, would certainly be capital goods, provided they also satisfy the requirement of 'used in the State' found in Section 2(11). The assessing authorities shall take note of this and apply their mind while passing orders of assessment.

28. Thus, the Honourable Division Bench has answered the question, "To qualify as "capital goods" the goods in question

need be used within the state, it falls within Sub-clause (a). However, if the goods sold by the petitioner falls within the ambit of sub-clause (b) to (g), they must also be used within the State.

29. Under section 8(1) of the CST Act, 1956, a dealer effecting sale to a registered dealer in the course of interstate sale is liable to pay tax at lower of the two rates between the rate prescribed therein and the rate prescribed for such goods for sale inside in the case of interstate sale.

30. Under Section 8(2) of the CST Act, 1956 in case of the sale falling outside Section 8(1) of CST Act, 1956, such a dealer is liable to pay tax at the rate applicable for sale or purchase of such goods inside the "appropriate state" under the sales tax law of that State.

31. Thus, in case of sale in the course of an inter-state sale or commerce to a registered dealer in another state, a registered dealer has to pay tax at the lower of the two rates whereas in the case of sale in the course of inter-state trade and commerce to a person who is not a registered dealer, CST is payable at the rate applicable to the goods within State.

32. During the period in dispute, goods falling under Part B of the 1st Schedule of the Tamil Nadu Vat Act, 2006 were liable to tax at 4%. It is the contention of the petitioner that it sold "capital goods" as defined in section 2 (11) of the Tamil Nadu Vat Act, 2006 and therefore was liable to pay tax at the lower rate under Entry 25, Part B of the 1st Schedule of the Tamil Nadu Vat Act, 2006.

33. If the goods traded by the petitioner in the course of interstate sale fell under the category of capital goods under sub-clause (a) of Section 2(11), the petitioner would be liable to pay tax at 4% in terms of rate prescribed under Entry 25 to Part B to the 1st Schedule of Tamil Nadu Vat Act, 2006.

34. On the other hand, if the goods traded by the petitioner in the course of inter-state sale fell outside within the purview of sub clause (b) to (g) of Section 2(1), they are not capital goods and therefore, the petitioner would be liable to pay tax at the rate prescribed under the Residuary Entry 69 to Part C to the 1st Schedule of the Tamil Nadu Vat Act, 2006.

respondent have clearly explained as to whether the goods traded and sold by the petitioner in the course of Inter-state sale fall under Section 2(11) (a) or under Section 2(11) (b) to (g) of the Tamil Nadu Vat Act, 2006.

36. Therefore, I am inclined to set aside the impugned order and remit the case back to the respondent. The respondent shall pass a fresh order keeping in mind the decision of the Hon'ble Division Bench of this Court rendered in M/s. Schwing Stetter (India) Pvt. Vs. The Commissioner Of Commercial Tax Officer and observations contained herein.

37. Since the dispute pertains to the assessment year 2007-08, the respondent is also requested to pass the aforesaid speaking order within a period of three months from the date of communication of this order. Needless to state, before passing such order, the petitioner shall be heard through its officers or authorized agent/sales tax representation. Petitioner may also file additional representatives etc., if any, within a period of 30 days from the date of receipt of copy of this order and appear before the respondent on the 1st instance on 2nd March 2020.

38. Writ Petition stands disposed with the above observation. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

सत्यमेव जयते Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Thiruvannamiyur Assessment Circle,
Chennai - 600 090.

+1 cc to Mr.Karthik Sundaram, Advocate,sr.5526

+1 cc to Spl.Government Pleader,sr.6842.

Pm(co)
krd 8/10

W.P.No.34294 of 2013
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