IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

CORAM:

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

Tax Case No.73 of 2015

Vista Security Technics (P) Ltd
Now known as Siemens Ltd
No.4, MG Road, Nungambakkam
Chennai - 34. .. Petitioner

-vs-

State of Tamil Nadu
Rep by the Deputy Commercial Tax Officer
Anna Salai II assessment circle
Chennai . .. Respondent

PRAYER: Tax Case filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 against the order of the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench) Chennai, passed in S.T.A.No.828/2005, dated 11.01.2011 and against the Tamilnadu Sales Tax Appellate Tribunal, (Main Branch), Chennai made in STA.No.828 of 2005 dated 11/01/2011 and against the Appellate Assistant Commissioner (C.T.)IV, Chennai made in Appeal No.AP 204/04 dated 25/07/2005.

For Petitioner : Mr.B.Sivaraman

For Respondent : Mr.V.Haribabu,
Additional Government Pleader (Tax)

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ORDER

T.S.Sivagnanam, J.

This tax case revision has been filed by the assessee under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 [the Act] challenging the order passed by the Tamil Nadu Sales Tax Appellate Tribunal (Main Bench), Chennai [the Tribunal] in STA.No.828/2005, dated 11.01.2011.

2.The tax case revision is admitted on the following question of law.

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in confirming the assessment of turnover by interpreting the petitioner's goods as falling under Entry No.14(iii) of Part D of the First Schedule instead of Entry 13(i) of Part C of the First Schedule resulting in an erroneous interpretation of the legislative intent?"

3.We have heard Mr.B.Sivaraman, learned counsel for M/s.Lakshmi Sriram, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader for the respondent.

4.The question which falls for consideration is whether the Tribunal was correct in reversing the order passed by the First Appellate Authority and holding that the goods dealt with by the petitioner would fall under Entry 14 (iii) of Part D of the First schedule to the Act instead of Entry 13(i) Part C of the First schedule. The assessee had imported access control systems, intrusion alarm systems, conventional fire alarm, analog conversory systems, closed circuit television and electronic spares.

5.The assessee claimed that the goods dealt by them are accessories and parts of the electronic systems, the individual items were imported and sold and are not capable of forming an individual unit and there is no finding given by the assessing officer that the assessee integrated the imported goods and made an electronic system and sold the same.

6.The assessee further contended that they sold the goods as such without any assembling and making a product and the buyers of the goods used third party services for integrating and installing the goods purchased from their customers and as such installation, integration and assembling the entire system is an electronic system to detect smoke in a fire or a burglar alarm. Thus, the assessee contended that all the materials needed to have an integrated electronic system namely, security alarm system have been classified as electronic systems only under Entry 50 of Part B to First schedule and in this regard placed reliance on the decision of this Court in the case of M/s.Digital Alarm Technologies (India) Pvt Ltd. It is submitted that the department has accepted that and assessed the commodity dealt with as electronic systems.

7.The assessee further contended that they are dealers in various parts and accessories of such security/alarm systems which are electronic systems. It is stated that in case of electronic burglar/fire alarm systems, though the system obtain power supply from AC mains, the entire operation is electronic in nature, as these systems are controlled by digital circuitry and even micro processors with software to detect intrusion/fire and give output. Further, it was contended that these systems can interface directly to a telephone line with their built-in widen capability and can dial up various telephone numbers to pass on information. Therefore, it was stated that the electrical and electronic systems are completely different from one another and are totally different from one another and the goods marketed by the assesee has to be held to be parts and accessories of an electronic system employed for burglar and fire alarm systems and the part and accessories by itself, cannot be usable independently but only as an accessory to the main system.

8.Therefore, the assessee contended that the product dealt by them would fall under Sl.No.13(i) of Part C of the First Schedule as electronic system. Further, the assessee distinguished the stand taken by the Assessing Officer by contending that Sl.No.14 of Part D deals predominantly with electrical systems, apparatus, appliances of all kinds other than those specified elsewhere in this schedule, except Sl.No.14 (iv) which deals with electronic instruments.

9.Since the goods dealt with by the assessee were basically electronic in nature and character and there is no specific entry for such type of goods dealt with by the appellant, there are chargeable to tax at 10%. Further, with regard to the words 'Burglar' or 'Fire alarm' occurring in S.No.14 of Part D of First Schedule, it is contended that the expression 'burglar' or 'fire alarm' should be read with the qualification in the opening part of the entry that the goods ought to be electrical in character, being instruments or appliances and not electronic in character and if the words are read in such a manner, it is clear that there is a specific exclusion of goods specified elsewhere in the Schedule in Sl.No.14 of Part D of the First schedule.

10.Further, it is contended that if two constructions are possible with regard to the reading of an entry in the Schedule, the construction which leans in favour of the assessee should be adopted. The first appellate authority agreed with the assessee and allowed the appeal by an order dated 25.07.2005. An identical issue arose in the assessee's case for the assessment year 2000-01 and 2001-02 and for those assessment years also, the assessee had succeeded before the first appellate authority. The revenue preferred an appeal before the Tribunal in STA.Nos.273 of 2004 and 294 of 2004. The Tribunal, by an common order dated 24.01.2006 dismissed the appeal filed by the State. Thus, the contention raised by the assessee was accepted and the order passed by the Assessing Officer stood reversed in respect of the assessment years 2001-01 and 2001-02.

11.As already pointed, for the assessment year 2002-03, the assessee succeeded before the First Appellate Authority, who passed an order in their favour on 25.07.2005 in A.P.No.204/2004. As against the order dated 25.07.2005 made in A.P.No.204/2004, the State preferred an appeal before the Tribunal, which allowed the appeal by the impugned order.

12.On a perusal of the impugned order passed by the Tribunal, we find that the Tribunal did not take note of the earlier order passed by the Tribunal dated 24.01.2006 in STA.Nos.273 and 294 of 2004 which arose in similar circumstances for the earlier two assessment years.

13.The learned Additional Government Pleader is right in his submission stating that each assessment year is distinct and independent. However, there is a similar caveat to the said submission that if the nature of transaction is identical for more than one year, then obviously the department cannot take a different stand, unless there are distinguishing circumstances pointed out by the Assessing Officer or the Appellate Authority or the Tribunal. In the instant case, probably the Tribunal was not aware of the earlier orders passed in favour of the assessee. Thus, we are of the considered view that two orders on the same type of transactions cannot be left to remain inconsistent with each other. We are informed that the revenue has not filed any appeal against the order passed in STA.Nos.273 of 2004 and 294 of 2004, dated 24.01.2006. If that is the case, the said decision binds the revenue and judicial discipline requires the revenue to accept the said interpretation even for the assessment year 2002-03.

14.Thus, for the above reasons, we are inclined to allow the appeal filed by the assessee and remand the matter to the Tribunal to take note of the decision in the assessee's own case in STA.Nos.273 of 2004 and 294 of 2004, dated 24.01.2006, which has been accepted by the department and pass fresh orders on merits and in accordance with law. In the light of the above, the question of law is left open. No costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1) The Tamil Nadu Sales Tax Appellate Tribunal (Main Bench),
   Chennai.

2) The Appellate Assistant Commissioner (C.T.)IV, Kuralagam
   Chennai - 108

+1 cc to M/s.Lakshmi Sriram, Advocate, S.R.No.16016

+1 cc to Spl.Govt.Pleader (Taxes), S.R.No.17124

Tax Case No.73 of 2015

RR(CO)
SSM(23/04/2019)