

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :04.06.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.11374 of 2019

Schneider Electric IT Business India Private Limited
Rep.by its Authorized Signatory,
T.A.BADRINARAYANAN
No.6, Indira Nagar, 1st Avenue,
Adyar, Chennai - 600 020.Petitioner

Vs.

State Tax Officer,
Adyar Assessment Circle,
No.46, Greenways Road
Chennai - 600 028.Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the impugned proceedings of the respondent passed in CST/984758/2015-16 dated 25.09.2018 and quash the same insofar as assessing the inter-state sales turnover of Rs.28,06,416/- @ 14.5% and further direct the Respondent to accept the Form-I and re-do the assessment in accordance with the law after providing personal hearing to the petitioner.

For Petitioner : Mr.N.Murali

For Respondent : Mr.M.Hariharan
Additional Government Pleader

ORDER

Mr.N.Murali, learned counsel on record for writ petitioner and Mr.M.Hariharan, learned Additional Government Pleader on behalf of sole respondent are before this Court.

2 Today, another writ petition being W.P.No.10681 of 2019 which was listed before this Court was disposed of finally. In that writ petition, the issue was pertaining to production of Form-I under 'The Central Sales Tax Act, 1956' ('CST Act' for brevity), seeking exemption under section 8(6) of CST Act, on

the basis that supply was made in the course of inter-State sale to a unit located in a 'Special Economic Zone' ('SEZ' for brevity).

3 In aforesaid writ petition, the principle that a rectification petition can be entertained post assessment laid down by a Hon'ble Division Bench of this Court in M/s. East Coast Bearings Vs. Commercial Tax Officer II dated 05.03.2018 made in Tax Case (Revision) Nos.19 to 22 of 2018 ('hereinafter 'East Coast Bearings' for brevity), was held to be applicable to Form I also which pertains to exemption.

4 It was submitted by learned counsel for writ petitioner that with regard to the same writ petitioner, the same issue pertaining subsequent assessment year is pending before this Court, but that writ petition is not on board, i.e., not shown in the list today. To be noted, the other writ petition pertains to assessment year CST 2014-15, whereas the instant writ petition pertains to assessment year CST 2015-16, but the central issue is the same.

5 Learned Revenue counsel also was ready with the case file and was ready to argue the instant writ petition. Both learned counsel consented for the instant writ petition being taken up and disposed of in the light of the order passed in W.P.No.10681 of 2019 today, though instant writ petition is not shown in the cause list today.

6 In the light of the consent given by both learned counsel, the instant writ petition is taken up.

7 There is no dispute or disagreement before this Court that the facts in the instant writ petition are identical / same qua the other writ petition, i.e., W.P.No.10681 of 2019 with only three aspects of the matter differing and they are (a) number / quantum, (b) assessment year and (c) in the previous writ petition, a rectification petition under section 84 of 'The Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for brevity) read with section 9(2) of 'The Central Sales Tax Act, 1956' ('CST Act for brevity) had been filed post assessment, whereas in the instant case, no such rectification application has been filed post assessment. To be noted, in the instant case, the impugned assessment was completed and the same is dated 03.08.2018.

8 The reason for not filing rectification application / petition in the instant case, according to learned counsel for writ petitioner, is that respondent had not entertained the rectification application / petition notwithstanding the principle laid down by this Hon'ble Court in East Coast Bearings

case for the previous assessment year, namely assessment year CST 2014-15 and therefore, writ petitioner assessee was under the belief that respondent Revenue is likely to take the same stand in the instant case also.

9 Be that as it may, in the light of disposal of the aforesaid case, i.e., W.P.No.10681 of 2019 pertaining to assessment year CST 2014-15 today, it is submitted that it follows as a natural and indisputable sequitur that if East Coast Bearings case principle is applicable, the writ petitioner would be entitled to file a rectification application for the assessment year 2015-16 also. In other words, the instant writ petition is clearly dovetailed with the issues in the earlier writ petition which has been disposed of today.

10 In the light of the aforesaid narrative, it may not be necessary to advert to the facts in great detail. However, for the sake of absolute clarity, it is necessary to set out that with regard to assessment order dated 03.08.2018, though it dealt with several other issues such as sales covered by C-Forms as well as exemption which was disallowed pertains to stock transfer, instant writ petition is restricted to exempted sales alone which was disallowed. To be precise, exempted sale turn over which was disallowed is Rs.28,06,416.00, rate of tax is 14.5%, on which such tax due is Rs.4,06,930.00. This is recorded.

11 In this backdrop, it would be apposite and proper that a similar order is passed in the instant case also. For the purpose of abundant clarity, this Court also deems it appropriate to extract the entire order passed in W.P.No.10681 of 2019 and the same reads as follows :

"Mr.N.Murali, learned counsel on record for writ petitioner and Mr.M.Hariharan, learned Additional Government Pleader on behalf of sole respondent are before this Court.

2. By consent of learned counsel on both sides i.e., counsel for writ petitioner as well as learned State counsel for Revenue, the main writ petition itself is taken up, heard out and disposed of though this matter is listed under the caption 'ADJOURNED ADMISSION' today.

3. To be noted, the sole respondent has filed a counter affidavit dated 22.04.2019 and therefore, pleadings are complete.

4. The scope of the instant writ petition is very narrow.

5. Facts as can be culled out from the case file that has been placed before this Court are as follows:

a) The writ petitioner assessee is a Trader in 'Information Technology products' ['IT products' for the sake of brevity] and is registered as a dealer on the file of the respondent both under 'The Tamil Nadu Value Added Tax Act, 2006' ['TNVAT Act' for the sake of brevity] and 'The Central Sales Tax Act, 1956' ['CST Act' for the sake of brevity].

b) The writ petitioner assessee has been filing monthly returns in Form I under the CST Act.

c) Instant matter pertains to assessment year 2014-2015.

d) Petitioner assessee reported a total turnover of Rs.7,52,65,185/- and taxable turnover of Rs.4,92,47,083/-

e) Writ petitioner also submitted Form I pertaining to sale of goods made in the course of interstate sale to a unit located in 'Special Economic Zones' ['SEZ' for the sake of brevity].

f) The assessment was completed and an assessment order was passed on 31.08.2017.

g) Thereafter, the writ petitioner assessee vide letter dated 13.02.2019 submitted further Forms I with regard to sale made by writ petitioner assessee in the course of interstate trade to the unit located in SEZ.

h) Petitioner assessee wanted the respondent to take into account Form I submitted on 13.02.2019 also and grant suitable exemptions.

i) Responding to this, respondent passed an order dated 21.02.2019 in CST/984758/2014-2015['impugned order' for the sake of brevity], wherein and whereby, the respondent held that the assessment order already made on 31.08.2017 for assessment year 2014-2015 cannot be revised.

j) It is not in dispute that while seeking such revision of assessment order, writ petitioner assessee placed before the respondent a judgment of a Hon'ble Division Bench of this Court in M/s East Coast Bearings Vs. Commercial Tax Officer II dated 05.03.2018

made in Tax Case (Revision)Nos.19 to 22 of 2018 ['East Coast Bearings case' for the sake of brevity]

k) The respondent vide the impugned order held that aforesaid judgment is not relevant.

l) Aggrieved, writ petitioner assessee has filed the instant writ petition, assailing the impugned order.

6. Learned counsel for writ petitioner advertent to 'East Coast Bearings case', submitted that Hon'ble Division Bench of this Court, inter alia by relying on a Full Bench judgment of this Court, namely State of Tamil Nadu Vs. Arul Murugan reported in 51 STC 381(FB) held that Forms submitted post assessment can also be taken into account and there can be revision.

7. To be noted, the aforesaid Hon'ble Division Bench judgment of this Court in 'M/s East Coast Bearings case' has also relied on principles laid down by Hon'ble Supreme Court in several judgments including State of H.P., and others v. Gujarat Ambuja Cement Ltd., and another reported in 142 STC 1 (SC).

8. Learned counsel for petitioner submitted that the respondent vide the impugned order ought to have followed the ratio and principle laid down by the aforesaid Hon'ble Division Bench judgment of this Court in 'M/s East Coast Bearings case', looked into Form I (post assessment) and revised the assessment.

9. Learned counsel for respondent i.e., State counsel advertent to the aforesaid order dated 22.04.2019(to be noted, this Court is informed that deponent of the counter affidavit is the same officer, who passed the impugned order) submitted that East Coast Bearings case pertains to Form C, whereas instant case pertains to Form I. It was submitted that Form C pertains to concessional rate of tax, whereas Form I pertains to exemption.

10. Before this Court deals with this aspect of the matter, it may be necessary to have a short and quick overview of the undisputed obtaining legal position in this regard.

11. With regard to exemption to a dealer under the CST Act for sale made in the case of interstate trade or commerce to a registered dealer for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging or for use as packing material or packing accessories in a unit located in any SEZ, the same is contained in Sub Section (6) of Section 8 of CST Act. Sub Section (6) of Section 8 of CST Act was inserted in the CST Act vide Act 20 of 2002, which is Finance Act. It was inserted with effect from 11.05.2002.

12. To be noted, the applicability of Sub Section (6) of Section 8 of CST Act and exemption on submission of Form I subject of course to scrutiny of Form I, by the Assessing Officer is not in dispute.

13. This Court deems it appropriate to extract Sub Section (6) of Section 8 of CST Act and the same reads as follows:

"(6) Notwithstanding anything contained in this section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce to a registered dealer for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging or for use as packing material or packing accessories in a unit located in any special economic zone or for development, operation and maintenance of special economic zone by the developer of the special economic zone, if such registered dealer has been authorised to establish such unit or to develop, operate and maintain such special economic zone by the authority specified by the Central Government in this behalf."

14. This takes us back to the East Coast Bearings case judgment rendered by a Hon'ble Division Bench of this Court.

15. From the submissions made that have been set out supra, it comes to light that revenue is not disputing the principle and ratio laid down in East Coast Bearings case. The principle in very simple terms is that certain Forms submitted by an assessee post completion of assessment order, can certainly be looked into and there can be revision of the assessment on the basis of Forms submitted post assessment, subject of course to scrutiny of the Forms. It is also to be noted that there are no other attendant issues or facts, which impact this exercise in the instant case.

16. Under such circumstances, this Court is unable to persuade itself to accept the submission that East Coast Bearings case principle will not enure to the benefit of the petitioner assessee as it is a case of Form I and not Form C. In other words, if it can be applied to a Form, which pertains to concessional rate of tax, this Court is unable to accept the submission that it will not apply to Forms pertaining to exemptions. The logic is very simple. Notionally, if one were to take an illustration of regular rate of tax being 10% and concessional rate of tax being 2%, if a Form pertaining to concessional rate of tax is submitted post assessment, 10% tax will be revised and made 2%. Likewise, if a form pertaining to exemption i.e., a form in the nature of Form I is produced post assessment, looked into and found to be acceptable, 10% would become 0%. Therefore, the distinction between concession and the exemption does not hold water in the instant case, more so, in the light of the peculiar facts and circumstances of the instant case.

17. There is one other aspect of the matter, which has been noticed by this Court.

18. While, there is no dispute or disagreement that the aforesaid East Coast Bearings case judgment was placed before the respondent Assessing authority, the respondent assessing authority has in a very cryptic and summary manner merely stated that the judgment is not relevant without giving any reasons as to why and how the judgment is not relevant or as to why it is not applicable. The

relevant portion is contained in the penultimate paragraph of the impugned order and the same reads as under:

"Further the judgment copy filed by the dealer is also not relevant to this matter, the judgment quoted by the dealer it is delivered by the High Court on the circumstance and nature of the dealer filed the Writ Petition and this is not applicable in this case."

19. The law is too very well settled that while defending an impugned order, the same cannot be improved by filing a counter affidavit. In other words, what has not been set out in the impugned order, cannot be articulated in the counter affidavit and developed further. However, without standing on this technical aspect, this court having alluded to the submissions of respondent, has examined the specific submission made on behalf of the revenue that East Coast Bearings case pertains to Form C which is concessional rate of tax, whereas instant case pertains to Form I, which is exemption.

20. In the aforesaid circumstances, this Court is the considered view that 'What is sauce to the goose is sauce to gander too'. The principle of East Coast Bearings case is applicable and is operating, qua Form C it has to necessarily be applied to Form I produced by the writ petitioner.

21. It is also to be noted that it is a case, where the ratio / principle laid down by the High Court, i.e., superior Court in the hierarchy of Courts has been disregarded by the respondent. This Court is constrained to say so as no reasons have been given by the respondent as to how and why the judgment of the Hon'ble Division Bench of this Court is not applicable to the petitioner assessee.

22. If the respondent has chosen to articulate on the same, it may well be a case of misreading or may be a case of construing the judgment differently. On the other hand, without saying how and why it is not applicable, it has been summarily mentioned in a cryptic manner that the judgment is not relevant. It is in this context that this Court is of the view that this is a case of disregarding the judgment of a superior Court.

23. Having given careful consideration to the rival submissions and having set out the views and conclusions of this Court, it may not be necessary to delve further into these aspects of the matter as the scope of dispute or disagreement is so narrow. In other words, the areas of agreement are so large that what can be described as bone of contention is extremely minuscule. That minuscule bone of contention has also been answered in favour of the petitioner assessee.

24. As a sequitur, the following order is passed:

a) The impugned order dated 21.02.2019 made by the respondent is set aside.

b) It is not in dispute that the petitioner assessee has already submitted Form I on 13.02.2019 as mentioned supra. To be noted, what has been submitted on 13.02.2019, is without dispute a rectification sought under Section 84 of the TNVAT Act read with Section 9(2) of CST Act. The petitioner assessee will not be permitted to file any further forms.

c) Respondent shall examine Form I submitted by the petitioner assessee on 13.02.2019 and pass assessment order afresh. If it entails revision of assessment order already made on 31.8.2017, the same shall be done.

d) Aforesaid revision of assessment shall be made within a period of three weeks from the date of receipt of a copy of this order.

25. Writ petition is disposed of on the above terms. There shall be no order as to costs."

12 In the light of the narrative supra, the following order is passed:

(a) The writ petitioner assessee shall file a rectification petition/application under section 84 of the TNVAT Act read with Section 9(2) of CST Act within a fortnight from the date of receipt of a copy of this order together with all necessary and relevant annexures.

(b) Respondent shall examine the rectification petition / application submitted by the petitioner assessee and pass assessment order afresh. If it

entails revision of assessment order already made on 03.08.2018, the same shall be done.

(c) Aforesaid revision of assessment shall be made within a period of three weeks from the date of receipt of rectification petition / application from the writ petitioner assessee.

13 Writ petition is disposed of on the above terms. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

State Tax Officer,
Adyar Assessment Circle,
No.46, Greenways Road
Chennai - 600 028.

+1cc to Mr.N.Murali, Advocate Sr.45199

W.P.No.11374 of 2019

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