IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2020

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.Nos.5342, 5343, 5344, 5354, 5355, 5357 & 5358 of 2018
and WMP.Nos.6555, 6556, 6575, 6578, 6579, 6580,
32970, 32973, 32974, 6557 & 6574 of 2018

Anitha Agarwal,
Propreitrix,
M/s.Amar Traders,
No.29, Ottukara Street,
Erode - 638 003. ..Petitioner in WP 5342 to 5344/18

Sanjeev Agarwal, Proprietor,
M/s.Amar tradevi, No.6, Ottukara Street,
Erode 638003 ..Petitioner in WP 5354 to 5355/18

.Vs.

1.The Commercial Tax Officer,
Park Road Circle,
Erode. ..1st Respondent in WP 5342 to 5344/18

Assistant Commissioner (ST)
Park Road Assessment Circle,
Eroe - I, ..Ist Respondent in WP.5354 to 5358/18

2.State Government of Tamil Nadu,
Rep. by its Secretary,
Commercial Taxes Department,
Chennai - 600 009. ..2nd Respondent in all WPs

Prayer:- Writ Petition 5342/2018 filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the proceedings of the Respondent in CST 706442/2002-03 dated 05.01.2018 and quash the same.

WP No.5343 of 2018

calling for the records relating to the proceedings of the 1st respondent in CST 706442/2002-03 dated 13.12.2017 and quash the same.

WP No.5344 of 2018

calling for the records relating to Letter No.7682/B1/2002-1 CT (B) issued by the 2nd respondent, dated 09.04.2002, quash the same, in so far as it applied retrospectively and consequently forbear the respondents fro levying tax retrospectively.

WP No.5354 of 2018

calling for the records relating to Letter No.7682/B1/2002-1 CT (B), issued by the 2nd Respondent, dated 09.04.2002 quash the same, in so far as it applies retrospectively and consequently forbear the respondents fro levying tax retrspectively.

WP No.5355 of 2018

calling for the records relating to the Order passed by the 1st Respondent in CST No.775909/2002-03 dated 18.12.2017 and quash the same.

WP No.5357 of 2018

calling for the records relating to the notice of the 1st Respondent in CST No.440886/2001-02 dated 28.08.2017 and quash the same.

WP No.5358 of 2018

calling for the records relating to Letter No.7682/B1/2001- CT (B) issued by the 2nd Respondent, dated 09.04.2002 quash the same in so far as it applies retrospectively and consequentlyl forbear the respondents from levying tax retrospectively.
(In all WPs)

For Petitioner : Mr.Niranjan Rajagopalan
For Respondents : Mr.Mohd. Shaffiq
Special Government Pleader
assisted by Mr.M.Hariharan,
Additional Government Pleader

COMMON ORDER

Common Order in WP.Nos.5342 & 5354 of 2018:

These writ petitions challenge an Erratum issued by the authorities under the Tamil Nadu General Sales Tax Act, 1959 (TNGST Act).

2.The petitioners are dealers in Turmeric. The commercial tax authorities, on 27.03.2002, issued a notification in G.O.Ms.No.29, CT in exercise of powers conferred under Section 59(1) of the TNGST Act exempting turnover from the sale of Chillies, Tamarind, Coriander and Turmeric - Entry -16/Part-B/Schedule-III - from the levy of tax in terms of the TNGST Act.

3.On the heels of this notification, the authorities issued impugned Erratum in letter No.7682/B1/2002-1 CT(B), dated 09.04.2002, wherein Entry-16 stood amended to read as follows:

> 'For "Chillies, tamarind, coriander and turmeric", read "Chillies, tamarind, coriander, turmeric and shikakai sold by any dealer whose total turnover in respect of these items does not exceed Rs.300 crores in a year".'

4.Thus while the original notification had extended the benefit of exemption to the entire turnover from sale of Turmeric, the Erratum restricted the benefit only to those dealers whose turnover did not exceed Rs.300 crores in a year. The petitioners' turnover admittedly falls within the limit of Rs.300 crores. However, the provisions of Section 8(2-A) of the Central Sales Tax Act, 1956 (CST Act) and the Explanation thereunder, extracted below, state that in determining turnover for the purposes of levy of CST, the formula set out therein shall be applied separately in regard to each component of turnover where the rate of tax differs.

> (8A) Determination of turnover.— (1) In determining the turnover of a dealer for the purpose of this Act, the following deductions shall be made from the aggregate of the sale prices, namely:— (a) the amount arrived at by applying the following formula— rate of tax x aggregate of sale Prices divided by 100 + rate of tax
>
> Provided that no deduction on the basis of the above formula shall be made if the amount by way of tax collected by a registered dealer, in accordance with the provisions of this Act, has been otherwise deducted from the aggregate of sale prices.

Explanation— Where the turnover of a dealer is taxable at different rates, the aforesaid formula shall be applied separately in respect of each part of the turnover liable to a different rate of tax;

5. The erratum was sought to be applied retrospectively to the assessments of the petitioner, as a result of which its turnover for the period 27.03.2002 to 09.04.2002 was denied exemption under the CST Act. Post 09.04.2002, there is no dispute on the liability to pay tax.

6.As far as retrospective application of the erratum is concerned, the law is pretty much settled. The enactment in question is a subordinate legislation and thus any operation attributed to the same would necessarily have to be only prospective. In Mahabir Vegetable Oils (P) Ltd. and another Vs. State of Haryana and others [(2006) (3) SCC 620], the Supreme Court considered the grant of exemption in terms of Section 64 of the Haryana General Sales Tax Act, concluding at paragraphs-42 & 43 as follows:

> '42.It is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. (See West v. Gwynne)
>
> 43.A retrospective effect to an amendment by way of a delegated legislation could be given, thus, only after coming into force of sub-section (2-A) of Section 64 of the Act and not prior thereto.'

7.This is the settled position of law as may be seen from a slew of decisions such as Sales Tax Officer vs. Shree Durga Oil Mills [(1998) 108 STC 274 SC at p.281], Honest Corporation vs. State of Tamil Nadu [(1999) 113 STC 26 Madras], Chennai Boilers vs. State of Tamil Nadu, [(1999) 114 STC 381] and State of Tamil Nadu vs. Kannapiran Steel Rolling Mills [(1999) 112 STC 161].

8. This may also be illustrated from a comparison of Section 17(1) and 17(3) of the TNGST Act, which confers power on the Government to notify exemptions and reduce tax. While Section 17(1) grants power to the Government to grant an exemption or reduce the rate of tax by notification, both prospectively or retrospectively, Section 17(3) whereunder the Government by notification, may cancel or vary the rate of tax levied issued under sub-section (1), is prospective. Thus while

a benefit conferred upon the assessee may be retrospective, the imposition of a liability may only be prospective. The impugned Erratum stands quashed.

9. There is yet another dimension to this matter. The petitioner had challenged the provisional assessment for one month and had obtained a stay of the order as early as in 2003. In 2017, the writ petition was allowed and the matter remanded to the assessing officer to be re-done, in accordance with law, after a lapse of 14 years. A notice dated 25.09.2017 was issued by the officer in the following terms:

'CST 706442/2002-03 o/o the Assistant Commissioner(CT),
Park road Circle, Erode.

Date 25.09.2017

Tmt.ANITHA AGARVAL
Protrix. of Amar Traders,
6 OTTUKARA CHINNAYA STREET,
ERODE.

NOTICE

Take notice that the W.P.45916 & 45918/2002 preferred by you against the provisional assessment demand in CST 706442/2002-03 dt.07.10.2002 before the Hon' High Court of Madras are allowed and the impugned orders are set aside and the matters are remanded to the Assessing Officer for fresh consideration which shall proceed with in accordance with law, by taking into consideration the legal position on the subject issue.

In the circumstance stated supra you are given another opportunity to produce all the necessary records with connected documentary evidences within 7 days of receipt of this notice, failing which orders will be passed on merits as proposed previously without further information.

Sd/-
STATE TAX OFFICER (S.T.)
PARK ROAD CIRCLE, ERODE.

10. Reply dated 10.10.017 was filed by the petitioner as follows:

Erode,
10/10/2017.

To
AC(CT),
Park Road Circle,
Erode.

Dear Madam,

I have received a letter from department seeking papers for 2002-2003. As the records being asked for are pertaining to 15 years earlier I am not able to find the copies of the same. I kindly request you to provide us with certified copies of the returns for the same year.
This will enable us to sort out the issue at the earliest. Please give us atleast 30 days of time to get the details from the bank for the same.
Thanking you,
Yours sincerely,
Sd/-
Anitha Agarwal

11. Without further ado, the officer proceeds to pass the impugned order sans a response to the request put forth by the petitioner or even an opportunity of personal hearing. The procedure followed is clearly in violation of the principles of natural justice or fairness. The assessments relate to the period 2002-03 and the impugned orders of assessment as well pre-assessment notices are set aside and the argument of the petitioner to the effect that records were unavailable and that 'C' forms could not be obtained from the purchasers at that distance of time, is certainly acceptable and in any event, ought to have been considered by the respondent.

12. The details of the writ petitions in this batch including the prayers are tabulated below for the sake of clarity:

W.P. No.	Petitioner	Prayer
5342 of 2018	Anitha Agarwal	CST Assessment dated 05.01.2018 for the period 2002-03 (Errata Order)
5343 of 2018	Anitha Agarwal	CST Assessment dated 13.12.2017 for the period 2002-03

5344 of 2018	Anitha Agarwal	Letter No. 7682/B1/2002-1 CT (B) dated 09.04.2002 issued by the 2nd respondent (Erratum)
5354 of 2018	Sanjeev Agarwal,	Letter No.7682/ B1/2002-1 CT(B) dated 09.04.2002 issued by the 2nd Respondent (Erratum)
5355 of 2018	Sanjeev Agarwal,	CST Assessment Order dated 18.12.2017 for the period 2002-03
5357 of 2018	Amar Singh Agarwal proprietor M/s.Madhogaria & Company No.29, Ottukara Street, Erode-638003 Rep by its Proprietor Mr.Amar Singh Agarwal	Pre-assessment notice in CST NO.440886/ 2001- 02 dated 28.08.2017
5358 of 2018	Amar Singh Agarwal proprietor M/s.Madhogaria & Company No.29, Ottukara Street, Erode-638003 Rep by its Proprietor Mr.Amar Singh Agarwal	Letter No.7682/ B1/ 2001-1 CTB (B) dated 09.04.2002 (Erratum)

13. In the light of the discussion above, Writ Petition Nos.5342 and 5354 of 2018 are allowed as are WP.Nos.5343, 5344, 5355, 5357 and 5358 of 2018 and the impugned erratum and orders of assessment are, set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)MDU

//True Copy//

Sub Assistant Registrar

vs

To

1.The Commercial Tax Officer,
Park Road Circle,
Erode.

2.State Government of Tamil Nadu,
Rep. by its Secretary,
Commercial Taxes Department,
Chennai - 600 009.

3.The Assistant Commissioner(ST),
Park Road Assessment Circle,
Erode.

+5cc's to M/s GR Associates , Advocates, SR No.10988, 10989, 10990, 10991 and 10992

+1cc to Government Pleader, SR No.11917

W.P.Nos.5342, 5343, 5344, 5354, 5355, 5357 & 5358 of 2018

and WMP.Nos.6555, 6556, 6575, 6578, 6579, 6580,

32970, 32973, 32974, 6557 & 6574 of 2018

MG(CO)

KKV/23/09/2020