IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.7.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Nos.6 to 8 of 2016

(heard through video conferencing)

Tvl.Iqbal Tools Syndicate,
Chennai-1. ...Petitioner in TC Nos.6 & 7/2016

Tvl.I.T.S.Tooling (P) Ltd.,
Chennai-1. ...Petitioner in TC No.8/2016

Vs

State of Tamil Nadu, rep.by its
Joint Commissioner (CT),
Chennai (North) Division,
Chennai-6. ...Respondent in TC.Nos.6 & 7/ 2016

State of Tamil Nadu, rep.by its
Joint Commissioner (CT),
Chennai Central Divisiion,
Chennai-6. ...Respondent in TC.No.8/2016

PRAYER: REVISIONS under Section 38 of the Tamil Nadu General Sales Tax Act against the common order dated 02.5.2013 made in STA.Nos. 13 and 14/2011 as well as the order dated 02.5.2013 made in STA.No. 15 of 2011 on the file of the Sales Tax Appellate Tribunal, Additional Bench, Chennai respectively for the assessment years 2006-07, 2005-06 and 2006-07 preferred against the order dated 09.04.2010 made in AP.28/09,AP.3/2010 and AP.29/2009 respectively passed by me Appellate Deputy Commissioner (CI)I, FAC, Chennai - 108, against the order of the Assistant Commissioner of Commercial Taxes, Harbour IV Assesment

Circle, Chennai dated 28.07.2009, made in TNGST/0060008/2006-07 and TNGST/0061032/2006-07 respectively.

For Petitioners : Mr.D.Vijayakumar

For Respondents : Mrs.G.Dhana Madhri, GA

COMMON ORDER

(Order of the Court was made by T.S.SIVAGNANAM,J)

These revisions are filed by the respective dealers challenging the common order passed by the Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Chennai (for short, the Tribunal), in STA.Nos.13 and 14 of 2011 as well as the order in STA.No.15 of 2011, all dated 02.5.2013 respectively for the assessment year 2006-07, 2005-06 and 2006-07. By the said orders, the orders passed by the Appellate Deputy Commissioner (CT)-I, Chennai respectively in Appeal Nos.28 of 2009, 3 of 2010 and 29 of 2009, all dated 09.4.2010 were set aside with regard to tax alone.

2. We have elaborately heard Mr.D.Vijayakumar, learned counsel appearing for the petitioners and Mrs.G.Dhana Madhri, learned Government Advocate appearing for the respondents.

3. The revisions were admitted on 12.2.2016 on the following substantial questions of law :

> "(i) Whether the Tribunal is justified in holding that the carbide tip tools sold by the petitioner to the dealer of 100% E.O.U. are within the meaning of machinery spare parts/ accessories or consumables ?
>
> (ii) Whether the Tribunal is justified in holding that the petitioner is not eligible for exemption as per G.O. Ms.No.528/21.11.97 for the sales made to dealer of 100% E.O.U. ?
>
> (iii) Whether the Tribunal is justified in holding that the goods (carbide tip inerts) sold by the petitioner are not consumable but only spare parts and accessories ? and
>
> (iv) Whether the Tribunal is justified in holding that though the goods (carbide tip inserts) used for cutting purpose lost is utility, it would not lose its identity to grant exemption to the petitioner?"

4. In these revisions, the issues, which arise for consideration are

(i) as to whether the reopening of assessment by the Assessing Authority by exercising the power under Section 55 of the Tamil Nadu General Sales Tax Act, 1959 was just and proper and legal and valid ? and

(ii) as to whether the Tribunal was right in setting aside the decision of the Appellate Deputy Commissioner (CT)-I, Chennai dated 09.4.2010 holding that the dealers were entitled to the benefit of exemption from payment of sales tax as granted by the Government vide G.O.Ms.No.528 Commercial Taxes and Religious Endowment Department dated 21.11.1997.

5. Before we examine the issues, which arise for consideration, the following factual position needs to be taken note of :

The petitioners - dealers supplied various items including industrial gas valves, ring frame assemblies, precision machined components to 100% export oriented units (EOUs), claimed exemption as the goods sold were consumable goods and the petitioners would be entitled to the benefit of the said Government Order dated 21.11.1997 and filed their returns. While so, the Inspection Wing of the respondent - Department inspected the place of business of the petitioners on 09.11.2006, 17.5.2005 and 09.11.2006 respectively and certain defects were pointed out, pursuant to which, a proposal was made wherein, among other things, the Assessing Officer proposed to disallow the claim for exemption on sales to EOUs and accordingly issued notices to the petitioners to file their objections. There was another proposal to levy penalty under Section 12(3)(b) of the Act.

6. For the sake of convenience, the case of the first petitioner is being referred to.

7. The first petitioner, vide their letter dated 08.10.2007, filed relevant details enclosing green card copies of the 100% EOU and sales details to 100% EOUs, which, obviously, would have shown the nature of product supplied, etc. The Assessing Officer verified the documents produced by the assessee and the details of supply of materials to 100% EOU and accordingly completed the assessment. Thereafter, in respect of the first petitioner, the Assessing Officer issued the notices dated 29.4.2009 proposing to invoke his power under Section 55 of the Act.

8. The Assessing Officer or the First Appellate Authority or the Tribunal has the power to rectify the error in the orders of assessment, which is apparent on the face of the record. The notices dated 29.4.2009 stated that the exemption granted in the said Government Order would not apply to tools and machinery, etc., and that the exemption on such turnover has been erroneously granted and it was proposed to rectify the mistake by invoking Section 55 of the Act. The dealers filed their objections on 15.7.2009 stating that they did not sell any machinery items, that what was sold by them were consumable items and that they were exempted as the goods were sold to 100% EOUs. The Assessing Officer stated that the dealers did not file any details with supporting documents for his verification and accordingly, overruled the objections and confirmed the proposal in the notices dated 29.4.2009 by the assessment orders dated 28.7.2009.

9. These orders were put to challenge by the dealers before the First Appellate Authority, who allowed the appeals by order dated 09.4.2010 inter alia holding that the commodity dealt with by the petitioners was not machinery parts or tools as found by the Assessing Officer, but it is a carbide tip inserts sold, which was used as a consumable for cutting only. It was further held that the dealers would be eligible to avail the exemption. The First Appellate Authority agreed that the case of the dealers would squarely fall within the meaning of Section 16(1)(b) of the Act and not under Section 55 of the Act and that there was no provision under Section 16(2) of the Act for reopening as there was no wilful escapement of turnover. The First Appellate Authority further held that there was no error which was found so as to invoke the power under Section 55 of the Act. For such a reason, the penalty, which was imposed, was also set aside.

10. The State preferred appeals before the Tribunal contending that the consumable goods should be completely used in the manufacturing activity. The Tribunal examined the samples, which were used carbide tip inserts and also accepted the fact that the carbide tip inserts lose their sharpness in the cutting edge thereby losing its utility, but not the identity. After making such an observation, the Tribunal framed the question for consideration as to what was consumable. The Tribunal referred to the decision of the Hon'ble Supreme Court in the case of Coastal Chemicals Limited Vs. CTO [reported in 117 STC 12] and the decision of the Kerala High Court in the case of Teaktex Processing Complex Limited Vs. State of Kerala [reported in 136 STC 435] and held that though the carbide tip inserts were used for cutting purposes, it could not be stated

that the tips lose their character, nature and identity in the manufacturing of other goods. The Tribunal also, though accepted that the carbide tip inserts may lose its utility, however held that it would not lose its identity as carbide tip inserts. It further held that in the manufacturing process, it was not passed on to the end product in an unidentifiable form thereby to be called as consumables. Ultimately, referring to the observations made in the aforementioned decisions, the appeals were partly allowed with regard to tax.

11. So far as the levy of penalty is concerned, the Tribunal concurred with the findings of the First Appellate Authority and dismissed the appeals of the State to that extent. To be noted, as against the order passed by the Tribunal confirming the order of the First Appellate Authority, in so far as the levy of penalty is concerned, the State filed a revision against the second petitioner in TCR.No.73 of 2017, which was dismissed by a Division Bench of this Court by order dated 22.12.2017. Therefore, to that extent, the orders passed by the Tribunal had become final.

12. The first question to be decided is as to whether the power under Section 55 of the Act could have been invoked and Section 55 of the Act gives power to rectify any error apparent on the face of the record. The Assessing Officer or the Appellate Authority or the Revisional Authority including the Appellate Tribunal may, at any time, within five years from the date of any order passed by it, rectify any error apparent on the face of the record. However, if such rectification would result in enhancement of the assessment or penalty, the dealer should be given a reasonable opportunity of being heard. The power under Section 55 of the Act is not a power of review, but it is a power of rectification only when there is an error apparent on the face of the record.

13. Therefore, the intention of the Legislature was to grant power to the Assessing Officer or the Appellate Authority or the Tribunal to rectify its orders when there is an error apparent on the face of the record. Hence, the power under Section 55 of the Act cannot be used to review an order of assessment by reopening an assessment. Such power has not been conferred on the Authority under Section 55 of the Act.

14. In the instant case, the Assessing Officer, while passing the revised assessment orders dated 28.7.2009, reviewed the earlier assessment orders, which is impermissible in law by

invoking Section 55 of the Act. We support the above conclusion with the following reasons :

As noticed above, after the inspection was conducted in the place of business of the respective dealers by the officers, notices were issued to the dealers proposing to disallow the exemption on sales to 100% EOUs. Upon receipt of the proposal, the dealers submitted their reply and produced documents and details of supply of material, etc. The Assessing Officer, on going through the documents, found them to be in order and allowed their claim for exemption. This exemption, which was allowed, was sought to be denied by the Assessing Officer by reopening the assessment and by invoking the power under Section 55 of the Act after issuing the notice dated 29.4.2009. On a reading of Section 55 of the Act, it is evidently clear that there was no power to reopen the assessment, but it is only a power to rectify a mistake, which is not a mistake that can be identified by a process of wrong drawn reasoning. However, the mistake should be apparent on the face of the record. Only if all these features are available, the assessment can be reopened by invoking the power under Section 55 of the Act. Therefore, we hold that the revision of assessment dated 28.7.2009 is wholly without jurisdiction. Hence, issue No.1 is decided in favour of the petitioners and against the Revenue.

15. The next aspect is as to whether the Tribunal was right in denying the benefit of exemption, largely, by referring to the decision of the Hon'ble Supreme Court in the case of Coastal Chemicals Limited and the decision of the Kerala High Court in the case of Teaktex Processing Complex Limited. In view of the factual position in the decision in the case of Coastal Chemicals Limited wherein the question involved was as to whether the natural gas fell within the meaning of the word 'consumables' in Section 5B(1) of the Andhra Pradesh General Sales Tax Act, 1957, based on which, the decision was rendered, we find, on facts, that the said decision cannot be of any assistance to the case of the Revenue.

16. So far as the decision in the case of Teaktex Processing Complex Limited is concerned, the question was as to whether the dyes and chemicals used in the execution of job work was taxable at the hands of the dealer. The factual position is entirely different in the said case and could not have been applied to the case on hand.

17. The most important aspect, which is to be noted, is that the exemption has been granted by the State Government for sale of certain items of goods to 100% EOUs in the State and the

units located in Chennai Export Processing Zone. Therefore, the object of exemption is to promote exports. The Tribunal proceeded largely by examining as to what would be the meaning of the term 'consumable' and referred to the two decisions and held that though the carbide tip inserts lose their utility, they do not lose identity. The Tribunal should have interpreted the expression 'consumable goods' and if the same is done, the nature of the goods supplied and whether the same gets consumed would be required to be examined.

18. Oxford Advanced Dictionary 9th Edition defines the expression 'consumable goods' as those goods, which are intended to be used fairly quickly and then replaced. Computer consumables such as the CDRs and printer cartridges are given as illustrations. We have no doubt in our mind that the carbide tip inserts are self destructive while they are fitted to the machinery and used for cutting. Therefore, if they lose their utility, they can no longer be called as carbide tips and the reasoning of the Tribunal that they continue to have their identity, is a finding which was rendered by the Tribunal without any material before it.

19. The exemption notification has to be interpreted in a strict manner without adding any words to it. As mentioned earlier, the object of the Legislature is to promote exports. Therefore, if viewed from the purchasers' point of view, the carbide tool becomes useless after it loses its utility. So far as the sellers are concerned, on sale of the goods and use by the purchasers, if it loses its utility, it can no longer be termed as a tool or a cutting device. Hence, viewed from the angle of both the purchasers and the sellers, the carbide tip tools are to be treated as consumable goods and are entitled to the benefit of exemption.

20. Interestingly, after 2006 when the Tamil Nadu Value Added Tax Act, 2006 came into force, the dealers have been enjoying the benefit of exemption for supply of the very same goods to 100 EOUs. Thus, the second issue, which arose for consideration, also requires to be answered in favour of the petitioners.

21. In the result, the above tax case revisions are allowed and the orders passed by the Tribunal are set aside.

Consequently, the orders passed by the First Appellate Authority dated 09.4.2010 are restored. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

1.The Joint Commissioner (CT),Chennai(North)Division,Ch-6.

2.The Joint Commissioner (CT),Chennai Central Division,Ch-6.

3.The Registrar, Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Chennai.

4.The Appellate Deputy Commissioner(CI)I, FAC, Chennai-8.

5.The Assistant Commissioner of Commercial Taxes, Harbour IV Assessment circle, Chennai.

6.The Commercial Tax Officer, Harbour IV Assessment circle, Chennai.

T.C.Nos.6 to 8 of 2016

SSV(CO)
KKV/03/09/2020