

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2021

CORAM :

The Honourable Mr. Justice T.S.SIVAGNANAM
and
The Honourable Ms. Justice R.N.MANJULA

W.P.No.32570 of 2002

Tvl.Jai Renga Mills Ltd.,
Rep. by its Managing Director,
Mr.K.J.Ravichandra Raja,
Rajapalayam.Petitioner

Vs

1. State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Commercial Taxes,
Fort St. George, Chennai - 9.
2. The Commercial Tax Officer-I,
Rajapalayam,
3. The Registrar,
Tamil Nadu Taxation Special Tribunal,
Chennai.Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the order in O.P.No.559 of 2002 dt. 12.06.2002 passed by the 3rd respondent herein to quash the same and to direct the 2nd respondent to pass orders on the application submitted by the petitioner under Section 55 of the TNGST Act dt. 12.03.2002 and to make the refund of the additional sales tax collected from the petitioner for the period from 01.04.1996 to 31.07.1996.

For Petitioner :Mr.A.S.Mujibur Rahman

For Respondents:Mr.Md.Shaffiq
Special Government Pleader
for R1 & R2
Mr.N.Inbarajan, Amicus Curiae
R3 - Tribunal

ORDER

(Made by T.S.Sivagnanam, J)

This writ petition has been filed challenging the order passed by the Tamil Nadu Taxation Special Tribunal, Chennai ('the Tribunal' for brevity) in O.P.No.559 of 2002 dated 12.06.2002 and to consequently direct the second respondent herein to pass orders on the application given by the petitioner dated 12.03.2002 to refund the additional sales tax collected.

2. The petitioner is a registered dealer on the file of the second respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as 'TNGST Act') for the assessment year 1996-97. The second respondent-Assessing Officer, vide order dated 10.04.1998 had levied and collected additional sales tax from the petitioner. The petitioner had approached the Tribunal in O.P.No.559 of 2002, by filing an application under Section 55 of the Act to direct the Assessing Officer to revise the assessment and refund the amount collected as additional sales tax for the assessment year 1996-97. The Tribunal rejected the application by placing reliance on the decision in the case of Siemens Ltd. vs State of Tamil Nadu [110 STC 313]. Challenging the same, the present writ petition has been filed.

3. Mr.A.S.Mujibur Rahman, learned counsel for the petitioner contended that the Assessing Officer ought to have revised the assessment by passing orders under Section 55 of the Act, in the light of the decision in Siemens Ltd., which was accepted by the Government in G.O.302, Commercial Taxes Department, dated 03.11.1998. It is further submitted that against the decision in Siemens Ltd., the Government has not preferred any appeal in the Hon'ble Supreme Court and the decision having become final, the assessment should have been revised. It is further submitted that the turnover for the assessment year 1996-97 should be taken from 01.04.1996 to 31.03.1997 and splitting up the assessment year into two parts, namely 01.04.1996 to 31.07.1996 and 01.08.1996 to 31.03.1997, for the purpose of levying additional sales tax is not permissible under law.

4. The learned counsel further submitted that the Tribunal ought to have considered various decisions of the Hon'ble Supreme Court, wherein it has been held that the additional sales tax collected for the period from 01.04.1996 to 31.07.1996 as per Act 23 of 1993, wherein the taxable limit was Rs.10 lakhs and above. Further, it is reiterated that the taxable turnover should not be split for a financial year while calculating and the year has to be taken as whole. The learned counsel for the

petitioner would state that the taxable turnover of the petitioner for the entire year 1996-97 falls below Rs.100 crores and therefore, the additional sales tax collected for the period from 01.04.1996 to 31.07.1996 could not be recovered on the ground that the taxable turnover was below Rs.100 crores and therefore, the additional sales tax was leviable. Therefore, it is contended that the collection of the additional sales tax to the tune of Rs.10,32,171/- for the period from 01.04.1996 to 31.07.1996 is without authority of law under Article 365 of the Constitution of India.

5. The learned Special Government Pleader appearing for the respondents submitted that the law on the point was settled in Siemens Ltd., which decision has become final and subsequently, the Hon'ble Division Bench in the case of Philips India Limited vs The Assistant Commissioner (CT), East Tract Assessment Circle II and others [2004 137 STC 134 (Mad)] has considered the legal position and held that the amendment of the Act in the course of the year prescribing different qualifying minimum taxable turnover for registered dealers and others was held to be discriminatory and was read down and the qualifying taxable turnover was to be computed of whole year and not from the date of amendment. Further, it is submitted that the decision in Siemens Ltd., was noted by the Hon'ble Division Bench in the case of State of Tamil Nadu vs National Time Co. [2011 39 VST 247 (Mad)].

6. We have elaborately heard the learned counsel for the parties and carefully perused the materials placed on record.

7. The law on the subject has been settled by the decision in Siemens Ltd., which was taken note of by the Hon'ble Division Bench of this Court in Philips India Limited, wherein it was held as follows:

"7. It is true that in the decision in question, namely Siemens Limited v. State of Tamil Nadu [1998] 110 STC 313, the Tribunal had observed:

"To give effect to the said intention we proceed to hold that clause (a) of sub-section (1) of section 2 of the principal Act, namely, Act 14 of 1970 is ultra vires and should stand deleted. We make it clear that we are striking down only clause (a) of section 2(1).

The aforesaid observation of the Tribunal considered in isolation, supports the contention of the petitioner to the effect that there was no provision attracting liability to pay additional sales tax before

August 1, 1996. However, as rightly observed by the Special Tribunal under the impugned order, the said observation made in [1998] 110 STC 313 has to be understood in the context in which such observation has been made. It is quite well settled that the effect of a judgment has to be examined in its totality and in the context in which it was made and not by referring to a stray sentence here or there, torn totally out of the context in which such observation has been made. It has to be remembered that before the Act was amended by Act 31 of 1996, the liability to pay additional sales tax in a graded scale had been clearly laid down under Section 2(1)(a) of the Tamil Nadu Additional Sales Tax Act, 1970. Only after tinkering had been made by the Legislature by amending section 2(1)(a), making it applicable to the dealers other than the dealers registered in Tamil Nadu and by introducing a new provision in the shape of Section 2(1)(aa), raising exemption limit regarding the liability to pay additional sales tax so far as the registered dealers in Tamil Nadu are concerned to more than Rs.100 crores, the provision was found offensive. In other words, Section 2(1), as it originally stood, was not found offensive, but Section 2(1)(a) as amended by the Act 31 of 1996 was struck down and the new provision as contained in Section 2(1)(aa) with required modifications was held to be applicable to all concerned. Even though the learned counsel appearing for the petitioner is correct in his submission to the effect that striking down of Section 2(1)(a) did not have the effect of reviving Section 2(1)(a) as it originally stood, the fact remains that so long as that provision, namely Section 2(1)(a) of the unamended Act, was in statute book, the liability to pay tax as per such provision was already incurred. In other words, the liability as envisaged under Section 2(1)(a) as per the original Act was in existence for the period from April 1, 1996 till July 31, 1996. At that stage the liability was incurred as soon as the turnover exceeded Rs.10 lakhs and as per the original provision, the extent of such

liability varied upon the taxable turnover as per the original provision. With effect from August 1, 1996, the exemption limit was raised to Rs.100 crores and by virtue of the decision of the Tribunal, such exemption was equally applicable to all concerned. In view of the above, the contention of the learned counsel for the petitioner that there was no liability during the period April 1, 1996 to July 31, 1996 is not acceptable.

8. Even assuming that there was no liability to pay and there was no provision regarding payment of additional sales tax between April 1, 1996 and July 31, 1996, the annual turnover of the petitioner for the assessment year 1996-97 was admittedly more than Rs.100 crores. It is immaterial that the taxable turnover for the period from August 1, 1996 to March 31, 1997 did not exceed Rs.100 crores. Even assuming that the liability to pay additional sales tax arose only with effect from August 1, 1996, the contention that the taxable turnover after the said date alone could be considered is also not tenable. The Assessing Officer was justified in coming to a conclusion that the taxable turnover for the period between April 1, 1996 and March 31, 1997 being more than Rs.100 crores, the petitioner was liable to pay additional sales tax even as per the amended provision as contained in Section 2(1)(aa).

9.....

10. Learned senior counsel has contended that under the impugned proceedings reference has been made to Section 55 of the TNGST Act for the purpose of effecting rectification, but jurisdiction under section 55 is not available to be exercised as the matter relates to Tamil Nadu Additional Sales Tax Act, 1970. This submission overlooks the basic concept that the levy of additional sales tax under section 2(1)(aa) of the Tamil Nadu Additional Sales Tax Act, 1970 is actually collection of sales tax at a higher rate from the dealers having turnover over a particular limit. This position is now clear in view of the Supreme Court decision

reported in 34 STC 73 (S. KODAR v. STATE OF TAMIL NADU). Moreover, Section 2(1)(b) specifically lays down that the provisions of the TNGST Act shall apply in relation to the additional tax payable under Section 2(1)(aa) as they apply in relation to the tax payable under the TNGST Act. Apart from the above, Section 4 of the Additional Sales Tax Act contains the rule making power by the Government to carry out the purposes of the Act. Even though certain rules have been framed relating to some aspects of the assessment to be made and no specific rule is available for the purpose of effecting rectification, Rule 9 of the Tamil Nadu Additional Sales Tax Rules, 1970 provides that the provisions of the Tamil Nadu General Sales Tax Rules, 1959 shall apply mutatis mutandis to the additional tax leviable under section 2 of the Act.

11. A combined reading of these provisions make it amply clear that the provision under Section 55 of the TNGST Act and the relevant rules would be applicable for the purpose of effecting rectification. The Tamil Nadu Additional Sales Tax Act, 1970 is not a self contained code. It merely supplements Tamil Nadu General Sales Tax Act. It is necessary to read and construe the Tamil Nadu General Sales Tax Act and the Tamil Nadu Additional Sales Tax Act together. The observation made by the Supreme Court in [1983] 53 STC 1 (Ashok Service Centre v. State of Orissa) in the context of Orissa Sales Tax Act and Orissa Additional Sales Tax Act is equally applicable in the present context. It has been held in [1999] 113 STC 496 (Mad.) (Kirloskar Brothers Ltd. v. State of Tamil Nadu) that the provisions under Section 55 of the TNGST Act can also be availed for the purpose of rectification of assessment under the Central Sales Tax Act and the ratio of the said decision would equally apply to the assessment of additional sales tax."

8. In National Time Co., the Division Bench took note of the decision in Siemens Ltd. and set aside the order passed by the Tribunal and remanded the matter back to the Assessing Officer to pass fresh orders keeping the taxable turnover of the

respondent-assessee therein upto 31.07.1996. The operative portion of the Judgment reads as follows:

"12. In the above stated background, when we consider the respective submissions of the learned counsel for the petitioner as well as the respondent, we find that the definition of the expression "year" under section 2(1) (t) of the Tamil Nadu General Sales Tax Act will have no implication, while applying the un-amended Section 2(1)(a) up to July 31, 1996 and the amended Section 2(1)(a) and 2(1)(aa) after August, 1 1996.

13. The definition of the expression "year" which means the financial year, is only for the limited purpose of ascertaining what is the financial year with reference to which the tax liability under the main Act as well as the Additional Sales Tax under the Tamil Nadu Sales Tax Act is to be worked out. The mere fact that under Section 2(1)(a), a reference is made to a "year", the same will not in any way create any different impact, while applying the liability or the rate of tax to be worked out during the financial year. In other words, if in the very same financial year, different rates are to be worked out by virtue of prescription of such different rates, due to statutory amendments, the only exercise to be carried out would be to ascertain the period for which the different rates of tax are to be worked out. In our considered view, such prescription of different rates in that financial year will not in any way affect the very basis of the liability created. Once we steer clear of the said position, we do not find hurdle at all in bifurcating the financial year in the case of any assessee, while applying the un-amended Section 2(1)(a) upto July 31, 1996 and the liability after its amendment on and after August 1, 1996, for the purpose of calculating the additional sales tax liability.

14. In the case on hand, having regard to the decision of the Special Tribunal in Siemens' case [1998] 110 STC 313, the Additional Sales Tax liability upto July 31, 1996 is to be worked out based on the un-amended Section 2

(1) (a), which was prevailing upto that date. As per the provision as it stood as on July 31, 1996, in the case of a dealer whose taxable turn over in that financial year upto July 31, 1996 exceeded ten lakhs of rupees, upto one crore of rupees, his tax liability has to be increased by an additional sales tax at the rate of 1.5%; where the taxable turnover exceeded one crore of rupees upto five crores of rupees, it is 2%; where it exceeded five crores of rupees up to ten crores of rupees, at the rate of 2.25%; where it exceeded ten crores upto 300 crores of rupees at the rate of 2.5% and where it exceeded 300 crores of rupees at the rate of 3%. However, no additional tax could be levied for the first ten lakhs of rupees.

15. Having regard to the impact made in the amended provision, as per the judgment of the Special Tribunal in Siemens' case[1998] 110 STC 313 (TNTST) on and after August 1, 1996, the payment of additional sales tax would arise only if the taxable turnover for the whole of the financial year exceeded one hundred crores of rupees and even in such a situation, while for the period up to July 31, 1996, the liability will have to be worked out as per the provision which was prevailing upto that date namely, the unamended Section 2(1)(a) and that for the period subsequent to August 1, 1996 up to March 31, 1997 for the taxable turnover generated on and after August 1, 1996 alone, the applicable rate of tax will have to be calculated.

16. To make the position more clear, for instance, in the financial year April 1, 1996 to March 31, 1997, for the period upto July 31, 1996, if the taxable turnover was Rs.50 lakhs, for the first ten lakhs of rupees, there would be no additional tax liability, for the rest forty lakhs of rupees, the liability by way of additional tax should be calculated at the rate of 1.5% and if for the whole of the financial year, the taxable turn over exceeded Rs.100 crores, for the remaining amount of Rs.99.50 lakhs i.e, excluding Rs.50 lakhs, which is relatable to

the period only upto July 31, 1996, the rate of tax as per the amended Section 2(1)(aa) will have to be worked out.

17. Keeping the above statutory implication relating to payment of additional sales tax as was applicable upto July 31, 1996 and after August 1, 1996, when we examine the order of the Assessing Authority dated 28.1.1998, in the case on hand, we find that the taxable turnover of the respondent - assessee was Rs.54,97,880/- up to July 31, 1996. The taxable turnover for the financial year is stated to have exceeded rupees one crore. But for the purpose of calculation of additional sales tax, since for the whole of the financial year, the taxable turnover did not exceed one hundred crores, there would be no necessity to make any further calculation for the period beyond July 31, 1996. The Assessing Authority calculated the additional sales tax at the rate of 2% on the taxable turn over for the whole of the year.

18. The learned Special Government Pleader fairly pointed out that since the unamended provision was very much in force upto July 31, 1996, the calculation of additional sales tax would have to be made by the Assessing Authority for the taxable turnover which was prevailing only upto the period July 31, 1996 and for the period subsequent to August 1, 1996, the liability would have been assessed, if at all the taxable turn over upto the end of the financial year exceeded one hundred crores of rupees and not otherwise. Consequently, the rate of tax applied viz., 2% was not in consonance with the statutory provision as was prevailing as on July 31, 1996. Since the taxable turnover did not cross Rs.100 crores during the said financial year, in the case of the respondent - assessee, the liability of additional sales tax will have to be calculated only for the period upto July 31, 1996 and not beyond and that too, on the taxable turnover that was available upto that date viz., July 31, 1996.

19. Having regard to the said position, the impugned order of the Tribunal as well as that of the Assessing Authority are liable to be set aside. While setting aside the order the Assessing Authority, we direct the Assessing Authority to pass fresh orders by keeping the taxable turnover of the respondent assessee upto July 31, 1996 in a sum of Rs.54,97,880/- and calculate the tax at the rate of 1.5% on the sum of Rs.44,97,880/- (i.e.), after deducting the first ten lakhs as provided under the proviso to sub-clause (i) of Section 2(1)(a)."

9. In the light of the law laid down in the aforesaid mentioned decisions, it goes without saying that the assessment made on the petitioner by the second respondent requires to be revised by following the law, which has been laid down in the aforesaid mentioned decisions. Therefore, we are of the view that the Tribunal should have exercised its jurisdiction and issued appropriate directions to the Assessing Officer instead of rejecting the application filed by the petitioner under Section 55 of the Act.

10. In the result, the Writ Petition is allowed. The impugned order is set aside and the matter is remanded back to the Assessing Officer to apply the aforesaid mentioned decisions and pass fresh orders in accordance with law, within a period of 8 weeks from the date of receipt of a copy of this order, after affording an opportunity of personal hearing to the petitioner. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

hvk

To

1. The Secretary to Government,
Department of Commercial Taxes,
Fort St. George, Chennai - 9.

WEB COPY

2. The Commercial Tax Officer-I,
Rajapalayam,
3. The Registrar,
Tamil Nadu Taxation Special Tribunal,
Chennai.

+lcc to the Special Government Pleader Sr.3893

W.P.No.32570 of 2002

pvs[co]
srg 25/02/2021



WEB COPY