

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

T.C.(R).No.1625 of 2008

The State of Tamilnadu,
Represented by the
Deputy Commissioner(Commercial Taxes),
Coimbatore Division, Coimbatore - 18.Petitioner

Vs

Tvl.New Era Electricals,
897, Avinashi Road,
Coimbatore.Respondent

PRAYER: Tax Case Revision filed under Section 38 of the TNGST Act, 1959 to revise the order of the Sales Tax Appellate Tribunal (Additional Bench), Coimbatore dated 20.10.2000 passed in Coimbatore Tribunal Appeal No.313/99, against the order of the Additional Appellate Assistant Commissioner (CT) Coimbatore in A.P.1310/98 dated 18/01/1999. Against the order of the Commercial Tax Officer, Avinashi Road Circle, Coimbatore in TNGST1780507/96-97 dated 07/09/1998.

For Petitioner: Mr.Md.Shaffiq
Special Government Pleader

For Respondents: Mr.N.Inbarajan

ORDER

(Made by T.S.Sivagnanam,J)

This Tax Case Revision has been filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1955 ('The Act' for brevity), initially before the Tamil Nadu Taxation Special Tribunal at Chennai, which was a Tribunal constituted as a substitute to deal with sales tax matters. Subsequently, the jurisdiction of the the Taxation Special Tribunal was diverted to this Court and the matter is now transferred to this Court to be heard and disposed of as a tax case revision.

2. The Department has filed this tax case revision, which was admitted on 17.04.2009 on the following substantial questions of law:

"1. Whether in the facts and circumstances of the case, the Tribunal is legally correct in directing the estimation of 1% addition for non-maintenance of stock book on the reasoning that the assessee is not a manufacturer?

2. Whether in the facts and circumstances of the case, the Tribunal is right in holding that the additional sales tax would be attracted for the assessment year 1996-97 since the taxable turnover did not exceed 100 crores as per amended provision of Section 2(1)(aa)?

3. Whether the order of the Tribunal is having deleted the consequential surcharge, additional sales tax and penalty is legally tenable?"

3. The substantial questions of law which have been raised for consideration has been answered in Philips India Limited vs The Assistant Commissioner (CT), Fast Tract Assessment Circle II and others [2004 137 STC 134 (Mad)]. The operative portion of the judgment reads 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 1.8.1996. 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 1.8.1996, 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).

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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."

4. In the light of the above, the substantial questions of law raised for consideration are answered in terms of the decision in Philips India Limited and accordingly, the tax case revision stands disposed of. No costs.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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To

1. The Deputy Commissioner (Commercial Taxes),
Coimbatore Division,
Coimbatore - 18.
2. The Sales Tax Appellate Tribunal
(Additional Bench), Coimbatore.
3. The Assistant Commissioner (CT),
Coimbatore.
4. The Commercial Tax Officer,
Avinashi Road Circle, Coimbatore.

+1cc to Mr.N.Inbarajan, Advocate Sr.3902
+1cc to the Special Government Pleader Sr.3892

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