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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P. No. 18818 of 2008
and
M.P.No.1 of 2008

Victory Chemicals (P) Ltd
Represented by its Director
C. Subhasingh
No.A/14-C, SIPCOT Industrial
Complex, Cuddalore - 607 005

.. Petitioner

Versus

1. The Commercial Tax Officer
Cuddalore Taluk

2. The Appellate Assistant
Commissioner (CT)
FAC, Cuddalore

3. Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench)
City Civil Court Building
High Court Complex
Chennai - 600 104

4. State of Tamil Nadu
Represented by the Deputy
Commissioner (CT)
Vellore Division

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records on the file of the third respondent herein in STA No. 1674/00 dated 27.06.2008 and quash the same.

For Petitioner	:	Mr. N. Inbarajan
For Respondents	:	Mr. Prashanth Kiran Government Advocate (Taxes)



O R D E R

(Order of the court was made by R.Mahadevan, J.)

Calling in question the order dated 27.06.2008 passed by the third respondent / Tamil Nadu Sales Tax Appellate Tribunal (for brevity, the Tribunal), the petitioner has preferred this writ petition to quash the same.

2. The petitioner/assessee is a dealer in chemicals. Originally, the Assessing Officer assessed the taxable turnover under the Tamil Nadu General Sales Tax Act, 1959 at Rs. 2,32,08,144/- for the assessment year 1996-97, besides levying additional sales tax at 1.5% for the taxable turnover upto 31.07.1996. However, by a revision of assessment dated 14.12.1998 under Section 16 of the TNGST Act, the first respondent revised the additional sales tax at 2% as against 1.5% on the turnover of Rs.72,43,397/- which is the taxable turnover upto 31.07.1996, besides levying penalty of Rs.51,217/- under Section 12 (3) (b) of the Act. According to the petitioner, the first respondent proceeded such assessment on the basis that a turnover of Rs.72,43,397/- ought to have been assessed to tax at the rate of 2% instead of 1.5% inasmuch as the taxable turnover for the whole year of 1996-1997 exceeded Rs.1 crore and therefore, as per Section 2(1)(a)(ii) of the Additional Sales Tax Act, 1970, the tax payable by the petitioner shall be increased at the rate of 2% of the taxable turnover. The petitioner raised objections by stating that by Act 31 of 1996, Section 2 (1) (a) was substituted and if the taxable turnover for a year exceeds Rs.100 crores only there shall be a levy of additional sales tax under the Tamil Nadu Additional Sales Tax Act, 1970 with effect from 01.08.1996 and therefore, for the purpose of levy of additional sales tax, the taxable turnover for the period from 01.04.1996 to 31.07.1996 has to be assessed as prescribed prior to amendment of Act 31 of 1996 and for the period from 01.08.1996 to 31.03.1997, the rate shall be revised as per the amendment by Act 31 of 1996.

3. Notwithstanding such objections, the first respondent has taken the entire taxable turnover of the whole year for the purpose of determining the rate of tax and the slab as prescribed in Section 2 (1) (a) of the Act and revised the rate of tax from 1.5% to 2%. Aggrieved by the same, the petitioner preferred an appeal before the second respondent, who concluded that for the purpose of liability under the Tamil Nadu Additional Sales Tax Act, 1970, the taxable turnover upto 31.07.1996 alone could be taken into consideration and accordingly, modified the order passed by the first respondent,



holding that there shall be no levy of additional sales tax under the Additional Sales Tax Act, 1970 inasmuch as the taxable turnover is less than Rs.100 crores, besides setting aside the order of penalty imposed by the first respondent.

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4. Challenging the order so passed by the second respondent, the fourth respondent filed an appeal before the third respondent / Tribunal, which allowed the appeal by order dated 27.06.2008 by observing that the taxable turnover for the period from 01.04.1996 to 31.07.1996 was above Rs.10 lakhs and the taxable turnover for the whole year exceeded Rs.1 crore and therefore, the order of the first respondent levying the rate of tax at 2% under the Additional Sales Tax Act, 1970 was restored and the order passed by the second respondent was set aside. Hence, the petitioner / assessee is before this court with this writ petition.

5. The issue involved in this writ petition is as to the applicability of un-amended section 2 (1) (a) of the Tamil Nadu Additional Sales Tax Act, 1970, which existed prior to Act 31 of 1996, since by Act 31 of 1996, the previous section 2(1)(a) came to be amended with effect from 01.08.1996 and after the amendment, section 2(1)(a) and 2(1)(aa) came to be introduced.

6. According to the learned counsel appearing for both sides, the aforesaid issue is covered by the decision of a Division Bench of this Court in the case of State of Tamil Nadu v. National Time Co. [(2011) 39 VST 247 (Mad)], wherein, it was held that "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 order passed by the Division Bench can usefully be extracted hereunder:-

"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 Act 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



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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 under 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 unamended section 2 (1) (a), which was prevailing up to that date. As per the provision as it stood as on July 31, 1996, in the case of a dealer whose taxable turnover in that financial year upto July 31, 1996 exceeded ten lakhs of rupees, up to one crore of rupees, his tax liability has to be increased by an additional sales tax at the rate of 1.5 per cent; where the taxable turnover exceeded one crore of rupees up to five crores of rupees, it is two per cent; where it exceeded five crores of rupees up to ten crores of rupees at the rate of 2.25 per cent; where it exceeded ten crores up to 300 crores of rupees at the rate of three per cent. 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 up to that date, namely, the unamended section 2 (1) (a) and that for the period subsequent to August 1, 1996 upto 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 1.4.1996 to 31.3.1997, for the period upto 31.7.1996, 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 January 28, 1998, in the case on hand, we find that the taxable turnover of the respondent - assessee was Rs.54,97,880 upto 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 two per cent on the taxable turnover 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 turnover upto the end of the financial year exceeded one hundred crores of rupees and not otherwise. Consequently, the rate of tax



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applied, viz., two per cent 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 of 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 per cent 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)."

7. Following the aforesaid order passed by the Division Bench of this Court, we set aside the orders of the Tribunal as well as the Assessing Authority. Consequently, we direct the assessing authority/first respondent to pass fresh orders in the light of the order of the Division Bench of this Court as mentioned supra, within a period of four weeks from the date of receipt of a copy of this order.

8. Accordingly, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar

dhk/rsh

To

1. The Commercial Tax Officer
Cuddalore Taluk

2. The Appellate Assistant Commissioner (CT) FAC,
Cuddalore.



3. Tamil Nadu Sales Tax Appellate Tribunal
(Additional Bench)
City Civil Court Building
High Court Complex, Chennai - 600 104

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4. The Deputy Commissioner (CT)
State of Tamil Nadu, Vellore Division

+lcc to Mr.N.Inbarajan, Advocate SR.No.60517

WP No. 18818 of 2008

BP (CO)
GN (24/03/2022)