IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. No. 18445 of 2009
and
M.P. No. 1 of 2009

M/s.United Spirits Limited,
represented by its Vice President (Taxation),
K.M.Pradeep Simha,
UB Tower, No.24, Vittal Mallaya Road,
Bangalore - 560 007.
Petitioner substituted vide order
of this Court dated 13.08.2019 in
W.P.No.18445 of 2009 ... Petitioner

Vs

The Deputy Commissioner (CT)-I (FAC),
Fast Track Assessment Circle-II,
Greams Road, Chennai - 600 006. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Prohibition, prohibiting the Respondent herein from proceeding further pursuant to his TNGST.1520199/2000-01 (Para 12/IIB-R.C.645/2005/A3), dated 25.08.2009.

For Petitioner : Mr.N.Sriprakash
For Respondent : Mr.Mohammed Shaffiq
Special Government Pleader

ORDER

The petitioner has challenged the revision notice issued under Section 16(2) of the TNGST Act, 1959, seeking to revise the assessment made for the Assessment Year 2000-2001 in respect of which an earlier assessment order was passed on 31.03.2005.

2. The relevant portion of the Show Cause Notice based on which the proposal has been made to revise the assessment reads as under:-

> "4. From the perusal of the above details and records furnished it is clear that Tvl.Balaji Distilleries Ltd., registered dealer in this office had sold two ships which were owned by them since August 1994 to other dealers in Mumbai.

Though the agreements between the buyer and seller had taken place at Mumbai & Nellore, the commercial invoice for both the ships were raised by Balaji Distilleries, (Shipping Division) at Chennai only. The transaction such as chartered Hire receipts, ship operation expenses relating to the above ships were shown in the books of accounts of Chennai Balaji Distilleries Limited only. The purchaser and seller signed the instrument of sale and signed "delivery and acceptance protocol". Further the movement of the ships to South Korea and Dubai Port were in the course of their voyage and the movement of the ships were not resulted in pursuant of contract of export between a foreign buyer and the dealer. There is neither foreign destination nor foreign seller or other state purchaser or seller.

5. Under section 2 read with subsection 2(n) of the TNGST Act, 1959, and invoking the provision for transfer of ownership under the merchandise shipping Act, the transaction should be deemed to have been completed in Tamilnadu and therefore the related sales turnover is liable to tax as follows.

1) Sales turnover of the ship Balaji Vintage	Rs.27,77,36,000.00
2) Sales turnover of the ship Balaji Premium	Rs.19,01,87,476.00
Total Sales turnover	Rs.46,79,23,476.00

6. It is therefore proposed to revise the amount under section 16 of the Act.

The above taxable turnover is liable to tax at 14% (11+3 AST)

> It is also proposed to levy penalty under Section 16(2) of the TNGST Act, 1959 at the appropriate rate.
>
> Objection if any to the above proposals may be filed in writing before the under signed within 15 days from the date of receipt of this notice failing which orders will be passed as proposed above."

3. The Show Cause Notice issued by the respondent is challenged primarily on the ground that the Show Cause Notice is contrary to Section 4(2) of the CST Act, 1956 and the definition of "sale" under Section 2(n) of the TNGST Act, 1959 read with explanation 3(a)(i) of the TNGST Act, 1959 as it stood during the material period.

4. The learned counsel for the petitioner submits that the Show Cause Notice appears to be based on an objection/note prepared by the Accountant General and based on the details furnished by the petitioner in response to the notice dated 01.04.2005 which spells out the date of the contract, actual date of the transactions and the position of the ships on the date of the agreement as Mumabi and Nellore for sale to ICICI Limited, Mumbai and Radiant Shipping Limited, Mumbai in respect of two ships called M.V.Balaji Vintage and M.V.Balaji Premium of petitioner respectively.

5. The learned counsel for the petitioner submits that the delivery of the ships were made in Inchon Port, South Korea and Dubai Port respectively and therefore the respondent exceeded the jurisdiction in seeking to revise the assessment by relying on the Accountant General Report/Audit Note.

6. The learned counsel for the petitioner also submits that impugned notice is also contrary to the clarification of the Principal Commissioner of Commercial Taxes, Chepauk, Chennai, who in his communication dated 29.03.2000 bearing Ref No.K.Dis.Acts.Cell IV/11589/2000, has clarified as under:-

> "Tvl.Chettinad Cement Corporation Limited, 603, Anna Salai, Chennai-6 are hereby informed that if the actual delivery of the ship takes place in a foreign country, where the ship sails/docked at the time of sale, the sale is outside the purview of Tamil Nadu General Sales Tax Act. It does not matter whether buyer is an Indian Company having the registered office in Chennai or outside the State or a foreign company."

He submits that even though the said clarification existed, the impugned notice has been issued on a wrong assumption of the provisions of the law. It is submitted as per the said clarification, the petitioner would not be liable to pay tax as the ships in question were not within the country at the time of the sale agreements and therefore did not satisfy the requirements of Section 4(2) of the CST Act, 1956 and in view to the definition of the "sale" in Explanation 3(a)(i) Section 2(n) of the TNGST Act, 1959.

7. The learned counsel for the respondent submits that in this case the commercial invoices were raised at Chennai. He submits the sale took place in Chennai though delivery may have been made outside Chennai. He refers to following passage from the Counter, which reads as under:-

> "The vessels shall be delivered and taken over safely afloat at a safe berth or at a safe Anchorage or in the buyers' option after in a port/place or at sea nominated by sellers and mutually agreed by the buyers."

8. It is therefore submitted that the situs of sale is Chennai and it is immaterial whether the ships were delivered at South Korea and/or Dubai Port during the course of their voyage. He submits that though the ships were purportedly delivered outside India, the ownerships and maintenance were taken care by the Chennai based company and therefore the provisions of law are applicable only to the commodities which were carried on board ships but not to the ships itself.

9. I have gone through the impugned notice, the original order of assessment dated 31.03.2005, the clarifications of the Principal Commissioner of Commercial Taxes, Chennai dated 29.03.2000 and the representations of the petitioner dated 01.04.2005 vide reply dated 13.05.2005.

10. The revision notice extracts the content of the petitioner's reply dated 13.05.2005, and has assumed the facts given in the representation of the petitioner in reply dated 13.05.2005 to be correct and has yet proposed to revise the assessment on the ground that the invoices was raised at Chennai and that movement of the ship to South Korea and Dubai ports were in the course of their voyage and movements of the ships were not as a resulted of contract of export between the foreign buyer and the dealer and that there is neither foreign destination nor foreign seller or other state purchaser or seller.

11. The impugned revision notice is beyond the scope of limitation under Article 286(2) of the Constitution of India read with Section 4(2) of the CST Act, 1956 and the definition of “sale” in Section 2(n) read with explanation 3(a) (i) of the TNGST Act, 1959. The impugned revision notice therefore has to go. However, this would be without prejudice to the rights of the respondent to articulate a fresh notice to the petitioner in accordance with the provisions of the TNGST Act, 1959 after factoring Section 4(2) CST Act, 1956 and Article 286(2) of the Constitution of India. Therefore, the respondent may either issue a fresh notice or a corrigendum to the impugned notice to the petitioner.

12. Therefore, without expressing any opinion on the merits of the case, I remit the case back to the respondent to issue a fresh notice or a corrigendum to the impugned notice within a period of 60 days from the date of receipt of a copy of this order clearly specifying as to the basis on which it proposes to revise the order of assessment completed on 31.03.2005. If such notice is issued within such time, the petitioner shall give its reply together with documents to substantiate the position of the respective ship on the date of sale i.e., invoice.

13. The respondent may pass appropriate order in accordance with law within a period of six months of receipt of this order. Needless to state, the petitioner shall be heard.

14. This Writ Petition stands disposed of with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy// Sub Assistant Registrar

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To
The Deputy Commissioner (CT)-I (FAC),
Fast Track Assessment Circle-II,
Greams Road, Chennai – 600 006.

+1 cc to Spl Government Pleader(Taxes) Sr.No. 14354
+1cc to Mr.N.Sriprakash, Advocate SR.No. 13464

W.P. No. 18445 of 2009
and
M.P. No. 1 of 2009

PL(CO)
A.SK(12.07.2021)