IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P. Nos. 27660, 27661 & 35334 of 2004
and
W.M.P. Nos. 33658 & 42573 of 2004

W.P.Nos. 27660 & 27661 of 2004

Raja Binding Works,
12/394, Bommanachetty Kadu,
Sanjeevirayanpet,
Salem - 636 006. ... Petitioner in W.P.Nos.27660 & 27661 of 2004

Vs

1. Deputy Commercial Tax Officer,
Annathanapatty Circle,
Salem.

2. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005. ... Respondents in W.P.Nos.27660 & 27661 of 2004

W.P.No. 35334 of 2004

Salem Namakkal Dharmapuri Books &
Note Books Dealers Association,
represented by its Secretary,
19, Langli Road, Salem. ... Petitioner

Vs

1. The Commissioner of Commercial Taxes,
Ezhilagam, Chennai - 600 005.

2. The State of Tamil Nadu,
represented by the
Secretary to Government,
Department of Commercial Taxes
and Religious Endowments,
Fort St.George, Chennai - 600 009. ... Respondents

Prayer in W.P.No.27660 of 2004: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the First and Second Respondents to forbear from levying or recovering sales tax on student note books made out of paper which has suffered tax under Serial No.22, Part C of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, even if purchased at the point of second sale from the second sellers within the State.

Prayer in W.P.No.27661 of 2004: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the Second Respondent in D.Dis.Acts Cell-II/30232/2004 dated 6.4.2004 and quashing the said proceedings of the Second Respondent in D.Dis.Acts Cell-II/30232/2004 dated 6.4.2004.

Prayer in W.P.No.35334 of 2004: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the files of the First Respondent herein in D.Dis.Acts Cell-II/30232/2004 dated 6.4.2004 quashing the proceedings of the First Respondent herein in D.Dis.Acts Cell-II/30232/2004 dated 6.4.2004 while directing the Respondents herein, its officers and agents not to deny the benefit of exemption under notification issued in G.O.Ms.No.96 CT&RE dated 27.3.1998 or further notification issued in II(1)/ CT/19(b.20)/2002 dated 27.3.2002 on the sale of student note books and copy books manufactured out of paper which has suffered tax under Serial No.22, Part-C of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, at the point of purchase by the members or at any earlier point of sale or purchase in the State.

For Petitioner : Mr.N.Inbarajan
(in all W.Ps)

For Respondents : Ms.G.Dhanamadhri
(in all W.Ps) Government Advocate

COMMON ORDER

By this common order, all the three writ petitions are being disposed of.

2. In W.P.No.27660 of 2004, the petitioner has prayed for a writ of mandamus, to direct the 1st and 2nd respondents, to forbear from levying or recovering sales tax on student note books made out of paper which has suffered tax under Sl.No.22, Part C of the 1st schedule of the Tamil Nadu General Sales Tax

Act, 1959, even if purchased at the point of second sale from the second sellers within the state of Tamil Nadu.

3. In W.P.No.27661 of 2004, the petitioner has challenged the impugned circular/clarification dated 06.04.2004 bearing Ref.No.D.Dis.Acts Cell-II/30232/2004 in Clarification No.96/2004. A similar challenge has been made in W.P.No.35334 of 2004.

4. It is the case of the petitioners that all along the sale of text books and copy books manufactured out of papers purchased within the State of Tamil Nadu, which had suffered tax were exempted. However, without any provocation, the impugned circular/clarification dated 06.04.2004 was issued. Under these circumstances, the impugned circular/clarification has been challenged stating that it is contrary to the notification issued by the Government exempting sale of note books even though the papers used in the manufacture of note books and copy books were made out of paper purchased from the dealers situated within the State of Tamil Nadu. It is submitted that the papers which were sold to the petitioners had suffered tax and therefore the petitioners were exempted from payment of tax.

5. The learned counsel for the petitioner submits that the impugned circular/clarification seeking to levy tax along with other two clarifications dated 12.04.2004 and 07.09.2004 were revisited by the Commissioner of Taxes on 08.02.2005 bearing Ref.No.Acts Cell-II/62175/2004, by watering down the reversal of the three circulars, one of which has been challenged in W.P.Nos.35334 and 27661 of 2004.

6. The content of the revised circular/clarification is reproduced below:-

> "Representations have been received to reconsider the earlier clarifications on Student Note Books issued in the references 3 to 6 as they vary from the clarifications issued earlier in the references 1st and 2nd cited. The connected records have been perused and the following clarifications is issued to rectify the error which had crept in the earlier clarifications.
>
> In this Office clarification in K.Dis.Acts Cell I/64354/2003, dated 17/12/2003, instead of paras (1) and (2) and in the following clarifications
>
> 1. Acts Cell II/D. Dis. 30232/2003, dated 06/04/2004.

2. Acts Cell II/D. Dis. 20763/2003, dated 12/04/2004.

3. Acts Cell II/D. Dis. 24118/2004, dated 07/09/2004.

For last two paragraphs, the following shall be substituted.

1. Student note books and copy books manufactured out of the paper purchased under EI, EII declaration forms (CST transactions) are liable to pay tax at 4% under entry no.60(ii), Part-B, First Schedule to the TNGST Act, 1959.

2. Sale of student note books and copy books manufactured out of paper purchased from registered dealers liable to pay tax under the TNGST Act, 1959, is exempt from tax as per the Notification No.II(1)/CT/19 (b-20)/2002, dated 27/03/2002."

7. The learned counsel for the petitioner submits that further circulars/clarifications has also been issued by the respondents dated 10.03.2005 and 03.03.2006, wherein, it has been clarified as under:-

"35. D.Dis Acts Cell-II/40059/2004 dated 10-3-2005

Rate of tax clarification under section 28-A of the TNGST Act, 1959 for "Student note books and copy books".

1. Student note books and copy books manufactured out of the paper purchased under E1/E2 declaration forms (CST transactions) are liable to pay tax at 4% under entry No.60(ii) in Part B of the First Schedule to the TNGST Act, 1959.

2. Sale of student note books and copy books manufactured out of paper purchased from registered dealers liable to pay tax under the TNGST Act, 1959, is exempt from tax as per Notification No.II(1)CT/19(b-20)/2002 dated 27-3-2002".

29. D.Dis Acts Cell-II/8244/2006 dated 3-3-2006 [Cln. No. 41/2006]

Rate of tax clarification under section 28-A of the TNGST Act, 1959 for "Student Note Books".

1. Student note books and copy books manufactured out of the paper purchased under E-I/E-II declaration forms (CST transactions) are liable to pay tax at 4% under entry No.60(ii) in Part B of the First Schedule to the TNGST Act, 1959.

2. Sale of student note books and copy books manufactured out of paper purchased from registered dealers liable to pay tax under the TNGST Act, 1959, is exempt from tax as per Notification No.II(1)CT/19(b-20)/2002 dated 27-3-2002".

8. In the light of the above circulars/clarifications, the learned counsel for the petitioner submits that the impugned circular/clarification dated 06.04.2004 is liable to be quashed.

9. Defending the impugned order, the learned counsel for the respondents submits that the writ petition is liable to be dismissed.

10. Heard the learned counsel for the petitioner and the learned Government Advocate for the respondents.

11. From the facts are narrated above, it is clear that the impugned circular/clarification dated 06.04.2004 has already been substantially watered-down by a subsequent circular/clarification dated 08.02.2005 of the Commissioner of Commercial Taxes, content of which has been extracted above.

12. The impugned clarification has been further diluted by the circulars/clarifications dated 10.03.2005 and 03.03.2006 (referred to supra). In the light of the above, the question of quashing the impugned circular/clarification does not arise as the circular itself has been further diluted as mentioned above.

13. Under these circumstances, these writ petitions are disposed by directing the respondents to complete pending assessment proceedings in terms of the revised circular/clarification dated 08.02.2005 bearing Ref.No.Acts Cell-II/62175/2004, circular/clarification dated 10.03.2005 bearing Ref.No.D. Dis. Acts Cell-II/40059/2004 and circular/clarification dated 03.03.2006 bearing Ref.No.D. Dis. Acts Cell-II/8244/2006.

14. These Writ Petitions stand disposed of with the above observations. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To
1. Deputy Commercial Tax Officer,
Annathanapatty Circle,
Salem.

2. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

3. The Secretary,
Government of Tamil Nadu,
Department of Commercial Taxes
and Religious Endowments,
Fort St.George, Chennai - 600 009.

+2cc to Mr.N.Inbarajan, Advocate, S.R.No.16849

+1cc to the Government Pleader, S.R.No.16971, 16970

W.P. Nos. 27660, 27661 & 35334 of 2004
and
W.M.P. Nos. 33658 & 42573 of 2004

PL(CO)
KM(26/04/2021)