IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.3.2021
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
The HONOURABLE MS.JUSTICE R.N.MANJULA
Writ Petition Nos.30162 & 30163 of 2004

M/s.New Video Ltd., now changed as M/s.New Video Pvt. Ltd., rep. By its power of attorney Mr.A.Rajasekhar ... Petitioner in both WPs.

Vs

1. The Tamil Nadu Sales Tax Appellate Tribunal, Additional Bench, Chennai, rep.by its Secretary, City Civil Court Buildings, Chennai.

2. The Appellate Assistant Commissioner(CT) IV, VI Floor, Kuralagam Annex, Chennai.

3. The Commercial Tax Officer, Anna Salai III Assessment Circle, Chennai ... Respondents in both WPs

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari respectively

W.P.No.30162 of 2004:

(i) to call for the records of the third respondent herein in CST/70579/94-95 and quash the impugned order dated 19.8.2004 on the ground that the same is against the provisions of the Central Sales Tax Act read with the provisions of the Tamil Nadu Additional Sales Tax Act and also against the judgment dated 14.9.2001 passed by the Division Bench of the Madras High Court in W.P.No.11631 of 1999; and

(ii) to call for the records the first respondent herein in T.A.85/99 & (OP.No.439/99) and quash the impugned order dated 26.7.2000 on the ground that the same is against Section 8(2-A) of the Central Sales Tax Act, 1956 read with Section 2(1)(a) of the Tamil Nadu Additional Sales Tax Act, 1970.

For Petitioner : Mr.P.Rajkumar (Both Cases)
For Respondents 2 & 3 : Mr.Mohammed Shaffiq, SGP

COMMON ORDER
(Order of the Court was made by T.S.SIVAGNANAM,J)

We have heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.Mohammed Shaffiq, learned Special Government Pleader appearing for the second respondent.

2. These writ petitions have been filed by the dealer, which is registered on the file of the third respondent under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and the Central Sales Tax Act, 1956.

3. W.P.No.30162 of 2004 has been filed challenging the order passed by the third respondent dated 19.8.2004 imposing penalty to the tune of Rs.3,11,432/-. W.P.No.30163 of 2004 has been filed by the petitioner challenging the order passed by the first respondent - Tribunal confirming the order dated 10.4.1997 passed by the second respondent - First Appellate Authority, who, in turn, confirmed the order of assessment passed by the third respondent dated 11.11.1995 assessing the petitioner's entire turnover to the tune of Rs.46,65,038/- at 10%.

4. Though the petitioner claimed that they had to be taxed at 3.6%, the Assessing Officer, the First Appellate Authority and the Tribunal rejected the stand taken by the assessee on the ground that the local rate of tax on the goods dealt with by the petitioner was 3% and after adding surcharge and additional sales tax, the rate of tax would come to 5.1% and since this rate of tax was more than 4%, the turnover had to be assessed at 10%.

5. The argument before us, which appeared to have been not placed either before the Tribunal or before the First Appellate Authority or before the Assessing Officer is by referring to the amendment, which is brought to Section 2(1)(a) of the Tamil Nadu Additional Sales Tax Act, 1970 (Act 23 of 1993) with effect from 1st April 1993, by virtue of which, all the slabs of 'tax' were substituted with a benefit to dealers, whose taxable turnover did not exceed one crore of rupees that no additional tax was payable for the first ten lakhs.

6. In terms of the said provision, the first ten lakhs of the turnover of the petitioner dealer is not liable for payment of additional tax. This position has been further elucidated and clarified by the Special Commissioner and Commissioner of CT, vide circular dated 29.4.1993. The relevant portions of the said circular read thus :

"(c) C/D form not produced and goods are not declared goods :

Here, under Section 8(2)(b), the rate shall be the local rate or a flat 10% whichever is higher. This means the local rate has to be calculated and compared with 10% and whichever is higher is charged. There is a proviso under Section 8(2)(A) that if the local rate of tax is less than 4%, then only the lower rate shall be charged.

Example 1 : Local rate is 3%. Company is a small company with inter-state sales turnover less than 10 lakhs so that additional sales tax is zero. Local rate is :

Basic TNGST Rate	: 3.00
Surcharge @ 15%	: 0.45
Additional Surcharge @ 5%	: 0.15
Additional sales tax	: zero
Total	: 3.60

Only 3.6% will be charged. Additional sales tax component cannot be passed on.

Example 2 : Basic rate is 3% but the company is a large one, whose inter-state sales turnover is 50 lakhs and therefore, after the initial 10 lakhs, the additional sales tax is 1.5%.

Basic TNGST Rate	: 3.00
Surcharge @ 15%	: 0.45
Additional Surcharge @ 5%	: 0.15
Additional sales tax	: 1.50
Total	: 5.10

Since 5.10 is higher than 4%, the central sales tax rate will be a flat 10%, the entire amount of which can be passed on.

Example 3 : Basic TNGST rate is 8%, the company is a large company with turnover equivalent to additional sales tax 1.5%, then local tax is

Basic TNGST Rate	: 8.00
Surcharge @ 15%	: 1.20
Additional Surcharge @ 5%	: 0.40
Additional sales tax	: 1.50
Total	: 11.10

Since 11.10 is higher than 10%, it is this 11.10% which should be charged, the additional sales tax component cannot be passed on."

7. In terms of the said circular, if the local rate of tax is 3% and the company is a small company with inter-state sales turnover less than Rs.10 lakhs, the additional sales tax is '0'.

8. The Tribunal was of the view that the turnover could not be split up, which appears to be not correct in the light of the said circular, which makes it clear that the initial Rs.10 lakhs turnover of the dealer could not be subjected to tax. Hence, we are of opinion that such benefit should accrue to the petitioner dealer.

9. For the above reasons, the writ petitions are partly allowed, the orders passed by (i) the Assessing Officer; (ii) the First Appellate Authority and (iii) the Tribunal are set aside and the matter is remanded to the Assessing Officer with a direction to give the benefit of the amendment by the Act 23 of 1993 by not levying additional sales tax on the first Rs.10 lakhs of the petitioner's turnover for the subject assessment year namely 1994-95. Consequently, the levy of penalty to that extent is set aside. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Secretary, Tamil Nadu Sales Tax Appellate Tribunal,
Additional Bench, City Civil Court Buildings, Chennai.

2.The Appellate Assistant Commissioner (CT) IV, Chennai.

3.The Commercial Tax Officer, Anna Salai,
III Assessment Circle, Chennai.

+1cc to Mr.P.Rajkumar, Advocate. SR.No.14327.

W.P.Nos.30162 & 30163 of 2004

SSN(CO)
CSR 29.03.2021