IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.3.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
The HONOURABLE MS.JUSTICE R.N.MANJULA

Writ Petition No.1707 of 2005
& WPMP.No.1897 of 2005

M/s.Vijay Spinners,
Rajapalayam ...Petitioner

Vs

The Joint Commissioner (CT)-
III (SMR), office of the Commissioner
of Commercial Taxes, Chennai-5 ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of this case on the file of the respondent in SMR.No.256/98 reference M1/ 2403/97 dated 27.7.2004 and quash the same.

For Petitioner : Mrs.Lakshmi Sriram
For Respondent : Mr.R.Swarnavel, GA

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

We have elaborately heard Mrs.Lakshmi Sriram, learned counsel for the petitioner and Mr.R.Swarnavel, learned Government Advocate appearing for the respondent.

2. This writ petition has been filed by the dealer registered under the provisions of the Tamil Nadu General Sales Tax Act on the file of Commercial Tax Officer-II, Rajapalayam. The petitioner filed their returns for the relevant year namely 1989-90 and the assessment was completed on 28.2.1991. Thereafter, there was an inspection by the Enforcement Wing Officials, which resulted in issuance of a notice dated 23.3.1995 proposing to revise the assessment. The petitioner objected to the same. Yet, the Assessing Officer did not agree with the contentions and a revision order was passed on 18.1.1996.

3. Aggrieved by the said order dated 18.1.1996, the petitioner preferred an appeal before the Appellate Assistant

Commissioner (CT), Virudhunagar and it was allowed by order dated 21.5.1996. The respondent herein invoked his suo motu revisional powers and issued a show cause notice dated 11.2.1998 proposing to set aside the order passed by the Appellate Assistant Commissioner (CT), Virudhunagar and restoring the order passed by the Assessing Officer.

4. On a reading of the said show cause notice dated 11.2.1998, it is seen that the respondent proposed to re-appreciate the facts and nothing was stated about the Form F Declarations filed by the petitioner, which were accepted by the Assessing Officer while completing the assessment. The petitioner sent a detailed reply dated 16.3.1999. However, the respondent confirmed the proposal in the said show cause notice. In fact, the petitioner raised additional grounds and placed various decisions including the order passed by the Hon'ble Supreme Court in the case of *Ashok Leyland Ltd. Vs. State of Tamil Nadu [reported in (2004) 134 STC 473]*. However, the respondent herein, by order dated 27.7.2004, rejected the contentions advanced by the petitioner and confirmed the proposal in the said show cause notice. Aggrieved by the same, the petitioner is before this Court by way of this writ petition.

5. The legal issue raised in this writ petition is no longer res integra and has been settled by the Hon'ble Supreme Court in the case of *Ashok Leyland Ltd.*, to the effect that once Form F Declarations are accepted and the assessment is completed, then the question of re-assessment does not arise. The relevant portions of that judgment read thus :

> *"100. In terms of Clause (3) of Article 269, inter-state sale is contrasted from local sale.*
>
> *101. An order passed by the statutory authority who has jurisdiction therefore, the same would amount to a part of substantive and not procedural law. In addition to this there is no provision for appeal. Thus, it is only in the limited cases of fraud, mis-representation etc. that reassessment can be directed and not if there had been a mere error of judgment.*
>
> *102. If it is not an inter-State sale provided through a legal fiction, then it amounts to transfer of stock and this is a finding which has been arrived at by a statutory authority where for there does not exist any provision for appeal. Therefore,*

it cannot be reopened on the premise that there was a mere error of judgment or change in opinion.

103. Once it is held that such determination of an issue having regard to legal fiction created in terms of Sub-section (2) of Section 6A is conclusive, it must a fortiorari follow that the same is binding.

104. The particulars required to be furnished in Form F clearly manifest that the proof required is as to whether the goods were factually transferred to the assessee himself or his branch office or his agent and not to any third party. Any other enquiry is beyond the realm of the assessing authority.

105. It is true that this Court in Ashok Leyland (supra) upon consideration of the matter holding that no statutory conclusiveness had been attached by reason of a legal fiction in terms of Sub-section (2) of Section 6A. This Court opined:

"After all Section 6A is also one of the provisions of this Act. There is no reason to elevate it to a higher status than the rest of the provisions".

106. With utmost respect, therein the Court did not take into consideration that the provisions of Section 6A having been provided by way of exclusionary clause subject to the satisfaction of the conditions precedent contained therein, and, thus, the same stand at an elevated stage over charging Section 6 of the Act. The assessing authority while passing an order is required to take into consideration the jurisdictional fact. Once it is found, having been conferred with a plenary power to determine its own jurisdiction, that he did not have any jurisdiction under the Act, the opinion of the assessing authority attains finality. What would be a jurisdictional fact has been noticed by this Court in Shrisht Dhawan (supra) in the following terms:

"19... A Jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction

by a court, tribunal or an authority. In Back's Legal Dictionary it is explained as a fact, which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad... "

107. In South India Corporation (P) Ltd. v. Secretary. Board of Revenue : [1964] 4SCR280 , this Court has held that special provisions shall prevail over the general provisions.

108. It is further trite that an administrative authority or a quasi-judicial authority while adjudicating upon a lis is obligated to pose and answer a right question so as to enable it to arrive at a conclusion as to whether he has jurisdiction in the matter or not. By reason of a legal fiction which becomes attracted in terms of determination made thereunder, the provisions of the Central Act shall stand excluded..

109. In A.V. Fernandez v. the State of Kerala : [1957]1SCR837 , this Court observed:

"There is a broad distinction between the provisions contained in the statute in regard to the exemptions of tax or refund or rebate of tax on the one hand and in regard to the non-liability to tax or non-imposition of tax on the other. In the former case, but for the provisions as regards the exemptions or refund or rebate of tax, the sales or purchases would have to be included in the gross turnover of the dealer because they are prima facie liable to tax and the only thing which the dealer is entitled to in respect thereof is the deduction from the gross turnover in order to arrive at the net turnover on which the

tax can be imposed. In the latter case, the sales or purchases are exempted from taxation altogether. The Legislature cannot enact a law imposing or authorising the imposition of a tax thereupon and they are not liable to any such imposition of tax. If they are thus not liable to tax, no tax can be levied or imposed on them and they do not come within the purview of the Act at all. The very fact of their non-liability to tax is sufficient to exclude them from the calculation of the gross turnover as well as the net turnover on which sales tax can be levied or imposed."

110. In Sahney Steel (supra) whereupon reliance has placed by the assessing authority, a contention was raised that the registered office and the branch office were separately registered as dealers under the sales tax law and transaction effected by the branch office should not be identified with transactions effected by the registered office, Pathak, J., as the learned Chief Justice-then was, observed :

"..We are unable to agree. Even if, as in the present case, the buyer places an order with the branch office and the branch office communicates the terms and specifications of the orders to the registered office and the branch office itself is concerned with the sales dispatching, billing and receiving of the sale price, the conclusion must be that the order placed by the buyer is an order placed with the Company and for the purpose of fulfilling that order the manufactured goods commence their journey from the registered office within the State of Andhra Pradesh to the branch office outside the State for delivery of the goods to the buyer..."

111. The Court in the facts of that case held that the movement from the head office to the branch office was for the purpose of delivery to the branch office, thereafter to the buyer through the branch office. The branch office merely acted as a conduit through which the goods passed on their way to the buyer. It is, however, relevant to note that the Court noticed :

"...It would have been a different matter if the particular goods had been dispatched by the registered office at Hyderabad to the branch office outside the State for sale in the open market and without reference to any order placed by the buyer. In such a case if the goods are purchased from the branch office, it is not a sale under which the goods commenced their movement from Hyderabad. It is a sale where the goods moved merely from the branch office to the buyer..."

112. The purpose of verification of the declaration made in Form F, therefore, is as to whether the branch office acted merely as a conduit or the transaction took place independent to the agreement to sell entered into by and between the buyer and the registered office or the office of the company situated outside the State. The said decision therefore, does not run counter to our reading of the said provision. Furthermore, the question which has been, raised before us had not been raised therein.

113. We, therefore, are of the opinion that the observations made by this Court in Ashok leyland (supra) to the effect that an order passed under Sub-Section (2) of Section 6A can be subject matter of reopening of a proceeding under Section 16 of the State Act was not correct."*

6. The decision of the Hon'ble Supreme Court in the case of *Ashok Leyland Ltd.,* was followed (i) by *one of us (TSSJ) while sitting singly* in the case of *M/s.Premier Instruments and Controls Ltd., Coimbatore Vs. State of Tamil Nadu [W.P.Nos. 9394 & 9395 of 2004 dated 27.7.2017]* and (ii) by a learned Single Judge of this Court recently in the case of (ii) *Kavitha Knitting Mills Vs. CTO (Additional), Tirupur [W.P.Nos.7252 & 7253 of 2010 dated 17.9.2019]* wherein the Department did not dispute the legal position. Hence, the impugned order passed by the respondent calls for interference.

7. In the light of the above, the writ petition is allowed, the impugned order passed by the respondent is set aside and the order passed by the Appellate Assistant Commissioner (CT),

Virudhunagar is restored. No costs. Consequently, the connected WPMP is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Joint Commissioner (CT)-III (SMR),
office of the Commissioner of Commercial Taxes,
Chennai-5

+1cc to M/s.Lakshisriram, Advocate SR.NO..15953
+1cc to The Special Government Pleader (Taxes), SR.NO..16495

AKM/31.03.21/7P- 4C/

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