

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19783 of 2012

M/s.Chennai Refractories & Minerals,
Represented by its Proprietrix,
AB-Block, 39, 5th Street, Anna Nagar,
Chennai - 600 040.
... Petitioner

Vs.

The Commercial Tax Officer,
Kilpauk Assessment Circle,
35, Halls Road, Kilpauk,
Chennai - 600 010. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the impugned proceedings of the respondent in CST/691791/2006-07 and quash the order dated 15.12.2011 as the same is passed contrary to Section 6(2)(b) of the CST Act, 1956.

For Petitioner : Mr.P.Rajkumar
For Respondent : Mr.R.Swarnavel
Government Advocate

O R D E R

The petitioner has challenged the impugned order dated 15.12.2011 passed by the respondent seeking to revise the original order of assessment made on 30.07.2010 for the Assessment Year 2006-2007. The petitioner is a dealer in refractive bricks. The petitioner had purchased refractive bricks from manufacturers from Madhya Pradesh and Kerala.

2.During the period in dispute, the petitioner had purchased bricks for a sum of Rs.33,18,881/- from one dealer. While the goods were in transit, the petitioner effected E 1 Transactions to a buyer in Karnataka, Tamilnadu and Union Territory of Pondicheery. In the Assessment order dated 30.07.2010, the

respondent stated that the petitioner had not produced C Form for a value of Rs.6,58,120/- and therefore the petitioner was liable to be pay tax at 10%. The petitioner accepted the same and paid the tax. Subsequently, based on the audit objections, the petitioner was issued with a notice dated 14.07.2011 to revise the Assessment under CST Act read with Section 16 of the TNGST Act, 1959.

3.By the impugned order, the entire transactions which was earlier exempted by the respondent vide original order of assessment dated 30.07.2010 was revised with the following observations:

On further scrutiny of the assessment records reveals that the dealers have claimed on exemption of Rs.33,18,881.00 towards transit sale under Section 6[2] of the CST Act 1956. On verification of the Form-C and E1-Form filed by the dealers, the above transit sales were made within the state.

Therefore, the sales were effected within the state and not occasioned the movement of goods from one State to another State and also not fulfill the requirement of the Section 6[2] of the CST Act 1956. The exemption allowed needs to be revised and to assess to tax at appropriate rate according to the decision of the Supreme Court in 19 VST 239.

4.During the course of hearing, the learned counsel for the petitioner drew my attention to the decision of the Hon'ble Supreme Court in A & G Projects Technologies Vs State of Karnataka [2009] 19 VST 239 (SC) wherein the Hon'ble Supreme Court held as follows:

Analysing Section 6(2), it is clear that sub-section (2) has been introduced in Section 6 in order to avoid the cascading effect of multiple taxation. A subsequent sale falling under sub-section (2), which satisfies the conditions mentioned in the proviso thereto, is exempt from tax as the first sale has been subjected to tax under sub-section (1) of Section 6 of the CST Act, 1956. Thus, in order to attract Section 6 (2), it is essential that the concerned sale must be a subsequent inter-state sale effected by transfer of documents of title to the goods during the movement of the goods from one State to another and it must be preceded by a prior inter-state sale.

This clarification was misinterpreted by the Accountant General of State which culminated in the revision notice to several dealers in the State who had effected E 1 Sales.

5.The background for issuing notice dated 14.07.2011 which culminated in the imugned order dated 15.12.2011 has captured in the communication of the Principal Secretary/Commissioner of Commercial Taxes to The Secretary to Government, Commercial Taxes and Registration Department vide letter dated 17.02.2012 bearing reference No Lr No Audit Cell I/19030/2010. It also indicates that the views of the Accountant General was not accepted by the Government. The Principal Secretary, Commissioner of Commercial Taxes has accepted the views of the Special Government Pleader which reads as under:

However, to substantiate the above views of the Department, the opinion of the Special Government Pleader was called for.

The Special Government had opined as follows:-

"...In my opinion, the above referred observation upon which the office of the Accountant General has placed reliance requires to be understood as meaning as referring to subsequent sale effected by transfer of documents of title before delivery is taken from the carrier or bailee in which event such subsequent sale would necessarily be deemed to be an interstate sale. The terminous quo point is the taking of delivery after which event any sale effected by transfer of documents of title would obviously become a local.

In view of the above, I am of the considered opinion that the interpretation laid by the Supreme Court in the above referred decision is absolutely in consonance with the provisions of the Central Sales Tax Act, 1956 and as such does not warrant any understanding to the effect that every subsequent sale effected by transfer of documents of title to the goods must be an interstate sale involving movement from one state to another.

However, I would like to add certain points making it very clear that Accountant General's views are not right. The view of the Accountant General as understood by me is that exemption cannot be granted under the Section, as transit sale, if it has been

effected to local dealers out of inter-state purchase by transfer of documents during the movement of the goods from other state and it would be appropriate to treat them as local sale only, taxable under the local Act. In other words there cannot be any interstate sale within the state and that the State alone has the right to tax it under Section 3(a).

The opinion of the Accountant General could be understood by citing an example 'A' a dealer in Delhi supplies goods to a dealer 'B' in Chennai and 'B' who is a dealer in Chennai transfer the same goods by transfer of documents of title or by subsequent transfer to a dealer 'C' in Chennai itself. According to the opinion of the Accountant General, the transfer from 'A' to 'B' is an interstate sale and transfer between 'B' to 'C' is not an interstate sale but it is only a local sale.

Having regard to the provision of Section 6(2) of the Central Sales Tax Act, 1956 read with Section 3(b), the view of the Accountant General is absolutely wrong and fallacious. Reading Section 3(b) and Section 6(2), it would be very clear that interstate sales can be made between two dealers residing in the same street. Quoting the very same sample which I have referred earlier if only the Assessing Officer proves with concrete evidence that there is a break in the chain between B & C then alone there could be a local sale and exemption under Section 6(2) could be denied. If there is no break in the chain and the goods which moved from 'A' to 'B' & 'B' to 'C' through the proper endorsement interstate sale, it amounts to subsequent sale. Thus, the audit para is not acceptable.

6. The above view was accepted. It had categorically stated that the audit objection is not acceptable. The relevant portion of the clarification of the Principal Secretary of State/Commissioner of Commercial Tax vide letter dated 17.02.2012 reads as under:

Based on all the above facts, the audit para is not acceptable. Inasmuch as the audit para is not accepted by the Department, disciplinary action against the

Assessing Officer/Internal Audit Officer is not considered necessary.

7.However, the impugned order dated 15.12.2011 has been passed contrary to their own views. Since the respondents have themselves not accepted that the views of the Accountant General, it was incorrect to demand tax from the petitioner. It stems from a misreading of the above paragraphs from the decision of the Hon'ble Supreme Court. Therefore, the impugned order passed by the respondent is liable to be quashed and is accordingly quashed.

8.Accordingly, this Writ petition stands allowed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/
Sub Asst. Registrar

jas

To
The Commercial Tax Officer,
Kilpauk Assessment Circle,
35, Halls Road, Kilpauk,
Chennai - 600 010.

+1 cc to Mr.P.Rajkumar Advocate sr10601
+1 cc to Special Government Pleader (Taxes) sr11064

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