In the High Court of Judicature at Madras

Dated : 04.8.2021

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Justice Mr.SATHI KUMAR SUKUMARA KURUP

Writ Appeal Nos.1843 & 1844 of 2021 and
CMP.Nos.11658 and 11670 of 2021

M/s.Sisco Medicals Device Private
Limited, rep.by its Managing Director
Vivek Bajaj ...Appellant/Petitioner

Vs

The Assistant Commissioner (CT),
Nandambakkam Assessment Circle,
No.17, Loganathan Street,
Choolaimedu, Chennai-94 ...Respondent/Respondent

APPEALS under Clause 15 of the Letters Patent against the common order dated 11.6.2021 made in W.P.Nos.2083 and 2084 of 2017.

Prayer in WP.No.2083 of 2017:
Writ Petition filed under Article 226 of the Constitution of India to call for the records on the file of the respondent in CST.650884/2008-09 dated 15.11.2016 and quash the same as illegal, against proviso to Sec.22(2) of TNVAT Act, without jurisdiction and authority of law and in violation of principles of natural justice and fair play.

Prayer in WP.No.2084 of 2017:
Writ Petition filed under Article 226 of the Constitution of India to call for the records on the file of the respondent in CST.650884/2008-09 dated 08.12.2016 and quash the same as illegal, against proviso to Sec.22(2) of TNVAT Act, without jurisdiction and authority of law and in violation of principles of natural justice and fair play.

For Appellant : Mr.T.Pamod Kumar Chopda

For Respondent: Mr.S.John J.Raja Singh, GA

COMMON JUDGMENT
(Judgment was delivered by T.S.SIVAGNANAM,J)

We have elaborately heard Mr.T.Pramod Kumar Chopda, learned counsel appearing for the appellant and Mr.S.John J.Raja Singh, learned Government Advocate accepting notice for the respondent.

2. These appeals, filed by the writ petitioner, are directed against the common order dated 11.6.2021 in W.P.Nos.2083 and 2084 of 2017.

3. The appellant, which is a registered dealer under the provisions of the Central Sales Tax Act, 1956 (for short, the CST Act) and the Tamil Nadu Value Added Tax Act, 2006 (for brevity, the TNVAT Act), filed the said writ petitions challenging the assessment orders (i) dated 15.11.2016 for the assessment year 2008-09 and (ii) dated 08.12.2016 for the assessment year 2009-10 under the CST Act. The said writ petitions were disposed of with certain directions. The learned Single Judge held that the assessments were without jurisdiction since, by virtue of the fiction introduced in the Proviso to Section 22(2) of the TNVAT Act, there was deemed assessment as on 30.6.2012 and therefore, the assessment orders passed by the respondent were without jurisdiction.

4. The appellant is not aggrieved by such a finding, but is aggrieved by the findings and directions issued in paragraphs 40 to 42 of the common impugned order, which read as hereunder :

> "40. Therefore, the respondent could only issue a notice under section 27 of the Tamil Nadu Value Added Tax Act, 2006 to revise the deemed assessment. However, the respondent has proceeded to pass the impugned orders dated 14.11.2016 and 08.12.2016 as if the old provisions were in force.
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> 41. Therefore, the assessment in the impugned notices are liable to be quashed. At the same time, the impugned orders which stands quashed now by this order shall be treated as notice issued to the petitioner under section 27 of the Tamil Nadu Value Added Tax Act, 2006 for the respective assessment years. The respondent may also at its discretion issue appropriate corrigendum, if any, within a period of thirty (30) days from date of receipt of this order. The petitioner is given liberty

to file appropriate reply and substantiate its case to articulate the correct basis to reopen the deemed assessment before the respondent by filing appropriate reply. This exercise shall be completed within a period of thirty (30) days thereafter.

42. The respondent shall thereafter endeavour to pass appropriate orders on merits in accordance with law after considering all the submissions of the petitioner within a period of ninety (90) days from the date of receipt of this order, since the dispute pertains to the Assessment Years 2008-2009 and 2009-2010."

5. The learned Single Judge observed that the Assessing Officer could only issue a notice under Section 27 of the TNVAT Act to revise the deemed assessment. To that extent, there can be no quarrel as it is a settlement of law and it is well settled that a revision of assessment could be only under Section 27 of the TNVAT Act. Equally, the learned Single Judge is right in observing that the Assessing Officer could not have proceeded under Section 22(2) of the TNVAT Act and therefore, the learned Single Judge has rightly quashed the impugned assessment orders.

6. However, after doing so, the learned Single Judge directed the impugned assessment orders to be treated as notices under Section 27 of the TNVAT Act. The question is as to whether such an exercise could be done by the Assessing Officer.

7. Section 27 of the TNVAT Act deals with assessment of escaped turnover and wrong availment of input tax credit. Sub-Section (2) of Section 27 of the TNVAT Act states that where, for any reason, the input tax credit has been availed wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the Assessing Authority shall, at any time, within a period of five years from the date of order of assessment, reverse input tax credit availed and determine the tax due after making such an enquiry, as it may consider necessary.

8. Thus, a limitation has been prescribed under Sub-Section (2) of Section 27 of the TNVAT Act to issue notice for revision of assessment and consequential direction to reverse the input tax credit. In terms of the common impugned order before us, the appellant herein has been assessed for both the assessment years as on 30.6.2012 by virtue of the deeming provision and that shall be reckoned as the date, on which, the assessments have

been completed. If that is so, as of now, i.e. 2021, the Court would not be justified in directing the assessment orders, which were impugned in the said writ petitions, to be treated as notices under Section 27 of the TNVAT Act, as it will be clearly time barred since the time limit would expire as early as 2018. Therefore, to that extent, the common impugned order passed by the learned Single Judge calls for interference.

9. The learned counsel appearing for the appellant further points out that the learned Single Judge has made an observation that no document was produced by the appellant to establish that there was a fire accident in the godown of the appellant and that the stocks of the appellant were lost by the floods, which occurred during November/ December 2015.

10. Before us, the appellant has filed an additional typed set of papers containing a copy of the first information report registered in Cr.No.1404 of 2012 on the file of Mangadu Police Station dated 14.8.2012, which would go to show that the fire accident had taken place in the godown of the appellant.

11. Furthermore, the learned counsel for the appellant submits that the learned Single Judge observed as if there were more than one godown for the appellant, which is factually incorrect as there was only one godown, which was ravaged because of the fire accident that took place on 13.8.2012.

12. The learned Government Advocate appearing for the respondent points out that the relevant assessments were under the CST Act, that the Assessing Officer was fully competent and empowered to issue the notices under Section 22(2) of the TNVAT Act and that the direction issued by the learned Single Judge to treat the assessment orders as notices under Section 27 of the TNVAT Act is also sustainable.

13. Section 9(2) of the CST Act states that subject to the other provisions of the CST Act and the Rules made thereunder, the Authorities for the time being empowered to assess, re-assess, collect and enforce payment of any tax under general sales tax law of the appropriate State shall, on behalf of the Government of India, assess re-assess, collect and enforce payment of tax, including any interest or penalty payable by a dealer under the CST Act as if the tax or interest or penalty payable by such a dealer under the CST Act is a tax or interest or penalty payable under the general sales tax law of the State; and for this purpose they may exercise all or any of the powers they have under the general sales tax law of the State; and the provisions of such law, including provisions relating to returns, provisional assessment, advance payment of tax, registration of the transferee of any business, imposition of

the tax liability of a person carrying on business on the transferee of, or successor to, such business, transfer of liability of any firm or Hindu undivided family to pay tax in the event of the dissolution of such firm or partition of such family, recovery of tax from third parties, appeals, reviews, revisions, references, refunds, rebates, penalties, charging or payment of interest, compounding of offences and treatment of documents furnished by a dealer as confidential, shall apply accordingly.

14. Therefore, the General Sales Tax Law of the State of Tamil Nadu in the instant case is the TNVAT Act and therefore, in terms of the above provision, the provisions of the TNVAT Act and the Rules framed thereunder would fully apply and govern the assessment proceedings under the CST Act.

15. For all the above reasons, the writ appeals are allowed and the order and directions issued by the learned Single Judge in paragraphs 41 and 42 of the common impugned order are set aside. Writ Petition Nos.2083 and 2084 of 2017 are allowed as prayed for. No costs. Consequently, the connected CMPs are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

RS
To

The Assistant Commissioner (CT),
Nandambakkam Assessment Circle,
No.17, Loganathan Street, Choolaimedu,
Chennai-94.

+1cc to Mr.T.Pramodkumar Chopda, Advocate, S.R.No.37925
+1cc to Special Government Pleader(Taxes), S.R.No.38584

WA.Nos.1843 & 1844 of 2021 and
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SJ(CO)
CB(23/08/2021)