IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.20172 2020
and WMP.No.24916 of 2020

M/s.S.R.Raja Agencies,
(now known as M/s.S.R.Raja Cements)
represented by its Proprietor,
No.34, Ramakrishna Street,
West Tambaram, Chennai – 600 045. ...Petitioner

Vs.

The Assistant Commissioner (ST),
Tambaram Assessment Circle,
Chennai-600 045. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records of the respondent in his proceedings in TNGST/0881362/2004-05, quash the order dated 20.10.2020 passed therein.

For Petitioner : Mr.P.V.Sudakar
For Respondent : Mr.TNC.Kaushik
Government Advocate

O R D E R

The petitioner is an authorised distributor and agent of Zuari Cement (Zuari). The challenge is to an order of assessment dated 20.10.2020, passed in terms of the provisions of Tamil Nadu General Sales Tax Act, 1959 (in short 'TNGST Act') for the period 2004-05 raising a demand of Additional Sales Tax Act (AST) as per the Tamil Nadu Additional Sales Tax Act, 1970 (TNAST Act) at the rate of 1%.

2. The original order of assessment dated 30.06.2006 imposed liability to AST and had been challenged before the first appellate authority, who had set aside the assessment on 26.03.2020. A direction had been given by the Appellate Deputy Commissioner to the assessing authority to verify whether the AST in question had been remitted by the Principal, Zuari. This

is in line with the prescription under Explanation-I to Section 2(1)(aa) of the TNAST Act.

3. The relevant statutory provision and Explanation are set out below:

'Sec. 2(1)(aa) The tax Payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereafter in this section referred to as the said Act), shall, in the case of a dealer including the principal selling or buying goods through agents whose taxable turnover [for a year exceeds ten crores of rupees], be increased by an additional tax, calculated at the following rates, namely:-

		RATE OF TAX
[(i)	Where the taxable turnover exceeds ten crores of rupees but does not exceed twenty-five crores of rupees.	1 per cent of the taxable turnover
(i-a)	Where the taxable turnover exceeds twenty-five crores of rupees but does not exceed fifty crores of rupees.	1.5 per cent of the taxable turnover]
(ii)	Where the taxable turnover exceeds fifty crores of rupees but does not exceed one hundred crores of rupees.	2 per cent of the taxable turnover
(iii)	Where the taxable turnover exceeds one hundred crores of rupees but does not exceed three hundred crores of rupees	2.5 per cent of the taxable turnover
(iv)	Where the taxable turnover exceeds three hundred crores of rupees	3 per cent of the taxable turnover

Explanation I. - "Taxable Turnover" for the purpose of this clause in respect of a principal selling or buying goods [....] through agents shall be the aggregate taxable turnover of all his agents relating to the sale or purchase of the goods of such principal within the State.

Explanation IV. - 'Taxable turnover' for the purpose of this clause does not include the turnover of resale, taxable under section 3-H of the said Act.

4. Though the remand was specifically to verify compliance with Explanation-I i.e. whether the principal had defrayed the liability of the agent, the assessing authority in the impugned order reiterates liability to AST at 1% of turnover, referring to Explanation-IV to Section 2(1)(aa). He however confirms the position, at paragraph-4 of the impugned order, that Zuari has remitted the AST in respect of the petitioner's sales as well.

5. Explanation-IV states that taxable turnover, for the purpose of this clause, does not include the turnover from resale, taxable under Section 3-H of the Act. Though the sales of cement by the petitioner are taxable not under Section 3H, but under Section 3(2A) of the Act, this turnover has already been brought to tax under original proceedings dated 2006.

6. That apart, the relevance of Explanation-IV is to determine whether the turnover in question would fall within the ambit of taxable turnover or not. In this case, since the sales

of cement by the petitioner are not taxable under Section 3H, but under Section 3(2A) such sales are taxable, though, in the light of Explanation-I, in the hands of the Principal. The respondent confirms even in the impugned order of assessment, that the petitioner, has vide letter dated 30.09.2010, enclosed a copy of the assessment order of Zuari Cements including the levy of AST at 2.5% for the consignment sales made to its agents including the sales made to this petitioner.

7. In the light of the discussion as above, the impugned order is set aside and this writ petition is allowed. Connected miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

v

To

The Assistant Commissioner (ST),
Tambaram Assessment Circle,
Chennai-600 045.

+1 CC to The Special Government Pleader(T) sr 29670.

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GPL(CO)
SP(19/07/2021)