IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM

THE HONOURABLE MR.JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.No.13381 of 2007
and M.P.No.1 of 2007

M/s.Machine Centre
rep. by Madhusoodan Bala
Power of attorney holder
214, Linghi Chetty Street
Chennai-1 .. Petitioner

Vs

1. The Sales Tax Appellate Tribunal
(Additional Bench)
City Civil Court Buildings
Chennai-104

2. The Commercial Tax Officer
Harbour II assessment circle
Chennai. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records on the files of the 1st respondent in S.T.A.No.33/02 dated 28.06.2006 and quash the same as being invalid and illegal.

For Petitioner : Mr.C.Venkat Raman

For Respondents : Mr.N.R.R.Arun Natarajan,
Spl.Govt.Pleader (Taxes)

ORDER

[Order of the Court was made by R. MAHADEVAN, J.]

Challenging the order dated 28.06.2006, passed by the first respondent / Sales Tax Appellate Tribunal (Additional Bench), Chennai, in STA No.33 of 2002, the petitioner / assessee has come up with this writ petition.

2.For the assessment year 1996-97, the petitioner filed its return disclosing taxable turnover of Rs.1,13,33,178/-. The second respondent assessed the same and passed the order dated 28.10.1999 levying additional sales tax at 2% on the turnover of Rs.41,84,419/- representing the taxable turnover from 01.04.1996 to 31.07.1996. Aggrieved by the same, the assessee went on appeal before the Appellate Assistant Commissioner, who directed the 2nd respondent to levy additional sales tax at 1.5% only on the turnover of Rs.31,84,419/- after granting a deduction of Rs.10 lakhs as per the Tamil Nadu Additional Sales Tax Act, 1970. The said order was challenged by way of appeal by the revenue before the first respondent / Sales Tax Appellate Tribunal. By order dated 28.06.2006, the first respondent allowed the revenue's appeal, by holding that additional sales tax was leviable at 2% only and not at 1.5% on the taxable turnover upto Rs.41,84,419/-. The said order of the first respondent is questioned in this writ petition by the assessee.

3.The learned counsel for the petitioner submitted that since the taxable turnover of the petitioner had crossed Rs.10 lakhs before 31.07.1996, it was only the law prevailing on the happening of the taxable event that will be applicable and hence, the correct rate applicable is 1.5% only and not 2% as fixed by the second respondent. The learned counsel further submitted that the amendment to the provisions of the Additional Sales Tax Act, having not made retrospective effect from 01.04.1996, the petitioner is entitled to the benefit of the unamended law. In support of his contention, the learned counsel placed reliance on the decision of a Division Bench of this court in the State of Tamil Nadu rep. by the Deputy Commissioner of Commercial Taxes v. Tvl.National Time Co., [2010 SCC Online Mad 3781]. Therefore, the learned counsel sought to allow this writ petition by quashing the order of the Appellate Tribunal.

4.The learned Special Government Pleader (Taxes) appearing for the respondents does not dispute the submissions so made on the side of the petitioner.

5.In that decision, while dealing with the question, as to how Section 2(1)(a) of the Tamil Nadu Additional Sales Tax Act, 1970, which existed prior to Act 31 of 1996, is applied, it was held by the Division Bench of this court as follows:

> “16.To make the position more clear, for instance, in the financial year 1.4.1996 to 31.3.1997, for the period upto 31.7.1996, if the taxable turnover was Rs.50 lakhs, for the first ten lakhs of rupees, there would be no additional tax liability, for the rest forty lakhs of rupees, the liability by way of additional tax should be calculated at the rate of

1.5% and if for the whole of the financial year, the taxable turn over exceeded Rs.100 crores, for the remaining amount of Rs.99.50 lakhs i.e., excluding Rs.50 lakhs, which is relatable to the period only upto 31.7.1996, the rate of tax as per the amended section 2(1)(aa) will have to be worked out.

17...

18.The learned Special Government Pleader fairly pointed out that since the unamended provision was very much in force upto 31.07.1996, the calculation of additional sales tax would have to be made by the Assessing Authority for the taxable turnover which was prevailing only upto the period 31.07.1996 and for the period subsequent to 1.8.1996, the liability would have been assessed, if at all the taxable turn over upto the end of the financial year exceeded one hundred crores of rupees and not otherwise. Consequently, the rate of tax applied viz., 2% was not in consonance with the statutory provision as was prevailing as on 31.07.1996. Since the taxable turnover did not cross Rs.100 crores during the said financial year, in the case of the respondent-assessee, the liability of additional sales tax will have to be calculated only for the period upto 31.07.1996 and not beyond and that too, on the taxable turnover that was available upto that date viz., 31.07.1996.

19. Having regard to the said position, the impugned order of the Tribunal as well as that of the Assessing Authority are liable to be set aside. While setting aside the order the Assessing Authority, we direct the Assessing Authority to pass fresh order by keeping the taxable turnover of the respondent assessee upto 31.7.1996 in a sum of Rs.54,97,880/- and calculate the tax at the rate of 1.5% on the sum of Rs.44,97,880/- (i.e) after deducting the first ten lakhs as provided under the proviso to sub-clause (i) of Section 2(1)(a)."

6.In the light of the judgment as referred to above, which is squarely applicable to the facts of the present case, wherein, the Appellate Tribunal erred in holding that the order of the assessing officer in levying additional sales tax at the rate of 2% on the taxable turnover of Rs.41,84,419/- without deducting first Rs.10 lakhs for the period from 01.04.1996 to 31.07.1996 is in order, we have no hesitation to quash the order of the first respondent dated 28.06.2006 in S.T.A.No.33/02 and is accordingly quashed. As a sequel, the order of the first Appellate Authority is restored.

7.In fine, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

nvsri

To
1. The Registrar, Sales Tax Appellate Tribunal
   (Additional Bench)
   City Civil Court Buildings
   Chennai-104

2. The Commercial Tax Officer
   Harbour II assessment circle
   Chennai.

3. The Appellate Assistant Commissioner (CT)-I
   Chennai.

+1cc to the Special Government Pleader,(Taxes) S.R.No.5800

W.P.No.13381 of 2007

GPL(CO)
CT(21/02/2022)