IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.19371 of 2006 &
WPMP.No.1 of 2006

J.Thomas & Company (P) Limited,
represented by its Managing Director,
Ashok Batra,
Coonoor – 643 101. ... Petitioner

Vs.

The Commercial Tax Officer (FAC),
Coonoor. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of certiorari to call for the records on the files of the Respondent herein in TNGST.No.2540206/2005-06 dated 14.6.2006 and quash the same.

For Petitioner : Mr.K.A.Parthasarathy

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader

O R D E R

Heard Mr.K.A.Parthasarthy, learned counsel for the petitioner and Mr.C.Harsha Raj, learned Additional Government Pleader for the respondent.

2. This order is to be read with in conjunction and continuation of order dated 21.06.2022 extracted below:

> *The impugned writ petition challenges a demand of additional sales tax on the ground that the turn over added in this petitioner's case relates to an assessee by the name of 'J.Thomas and Company Auctioneers (Tamilnadu)' (in short 'Auctioneers').*
>
> *2.The learned Additional Government Pleader would submit that in fact the registration of the Auctioneers has been cancelled on the ground that obtaining of the registration was itself a colourable device to split the turnover between the present petitioner and the auctioneers to bring both below the limit of Rs.10crores.*
>
> *3.As against the cancellation of registration dated 30.05.2006, the Auctioneers have filed a revision petition on 22.06.2006 under Section 33 of the Tamil Nadu Goods and Service Tax Act, 1959, which is pending. The revision petition shall be disposed within a period of four (4) weeks from today, after hearing the Auctioneers. Seeing as the matter relates to 2006, all efforts should be made to adhere to this time line.*
>
> *4.Mr.K.A.Parthasarathy, learned counsel appearing for the petitioner has filed the revision petition on behalf of the Auctioneers and has placed on record, a communication dated 13.11.2006 issued by the Deputy Commissioner (Commercial Taxes) conveying that the revision petition filed by the Auctioneers stands deferred, till the present writ petition is decided. I would think otherwise. Let the revision petition be decided at the first instance.*
>
> *5.The Auctioneers will appear for the purposes of hearing of the revision petition before the Deputy Commissioner on 29.06.2022 at 10.30 a.m. and this order shall be conveyed to them by their counsel Mr.Parthasarathy. No separate notice need be issued in this regard.*
>
> *6.List on 27.07.2022 for production of orders.*

3. Consequent upon the direction above, the Joint Commissioner has passed

an order on 14.07.2022 in the case of the auctioneer, adverse to the auctioneer. Two questions have been framed by the Joint Commissioner in dealing with the revision petition, as follows:

> *'1) Whether the act of the petitioner taking a separate registration for a subsidiary company in the state of Tamilnadu when there is already a Parent company registered in the state which is involved in the same line of business could be treated as "Tax Planning" or as a "Coloured Device" or a "Disguise"?*
>
> *2) Whether the action of the assessing authority to cancel the registration of the subsidiary company (i.e) the petitioner is correct?'*

4. The conclusion of the Joint Commissioner is based upon the judgment of the Madras High Court in the case of *McDowell and Co. Ltd. Vs. Commercial Tax Officer,* C.A.No.570 of 1983.

5. Learned counsel for the petitioner indicates that the auctioneer is contemplating further revision as against aforesaid order dated 14.07.2022. That is on the one hand.

6. The challenge in the present matter is to a communication dated 14.06.2006 raising a demand of Additional Sales Tax (AST) upon the petitioner. According to the petitioner, no notice has been issued prior to raising of the demand in the impugned communication. I find that the communication is based upon the proceedings of the Commercial Taxes Officer rejecting the registration of the auctioneer with effect from 25.01.2005.

7. To that extent and as the raising of the demand in the petitioner's case is

only a consequence of the cancellation in the case of the auctioneer there is some justification in the issuance of the impugned notice dated 14.06.2006. However, the petitioner should, undoubtedly, have been heard prior to fastening such liability upon it.

8. The petitioner is thus granted an opportunity to put forth its response before the authority. Since learned counsel states that the auctioneer intends to challenge the cancellation of registration as upheld by order dated 14.07.2022, the following consolidated directions are issued in the interest of uniformity and consistency and in order to enable both the parties to engage in a fruitful, productive and consistent disposal of the matter:

(i) The petitioner will make its representation/file its response in regard to the impugned notice dated 14.06.2006, within a period of four weeks from today.

(ii) The petitioner will be heard thereafter and a view taken on the additional sales tax liability of the petitioner bearing in mind order dated 14.07.2022.

(iii) If the auctioneer challenges order dated 14.07.2022 by way of a further revision, the present proceedings in the case of the petitioner shall be kept in abeyance till such time the revision is disposed.

(iv) It is made clear that if no revision is filed within the statutory time granted for revision, there is no necessity for the officer to wait and he will proceed promptly to determine the liability of the petitioner.

(v) In the event that such revision is filed within the time, let the same be disposed within a period of four weeks from date of institution of that revision petition after hearing the petitioner therein and effect be given to the result of the revision petition in the case of this petitioner as well.

9. The impugned communication dated 14.06.2006 is sustained and this writ petition is dismissed with liberty as above. as aforesaid. No costs. Connected miscellaneous petition is closed. No costs.

27.07.2022

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Index : Yes
Speaking Order

To

The Commercial Tax Officer (FAC),
Coonoor.

DR.ANITA SUMANTH, J.

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