IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2023

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.3904 of 2021
and
W.M.P.No.4455 of 2021

Erode Cloth Merchants Association
Rep. By its President Shri.K.Kalaiselvan
83, East Kongalamman Kovil Street,
Erode – 638 001. .. Petitioner

vs

1.The State of Tamil Nadu
Rep. By its Secretary,
Commercial Taxes Department,
Fort St.George, Chennai.

2.The Principal Secretary / Commissioner
of Commercial Taxes,
(now known as Commissioner of State Tax)
Ezhilagam, Chepauk,
Chennai – 600 004. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus forbearing the respondents herein, their sub-ordinates, officers and any person working under them or for them from assessing or recovering any sums under Section 13 of the Tamil Nadu Value Added Tax Act, 2006 from such of the members of the petitioner herein who are carrying on business as proprietors, partnership firms or Hindu Undivided Family in view of clarification in Letter No.Acts Cell – 3/32485/2015 dt.04.11.2015 issued by the 2nd respondent herein and communication in Letter No.Legal Cell 5/34991/2015 dt.23.11.2015 of the 2nd respondent herein.

For Petitioner	:	Mrs.Hema Muralikrishnan
For Respondents	:	Mr.T.N.C.Kaushik Additional Government Pleader

ORDER

This writ petition is filed by the Erode Cloth Merchants Association comprising 1097 members on its rolls as on 04.02.2021 when the writ petition was instituted. Of that number, 10 members are said to be Corporates or associations of persons and the remaining 1087 are said to be proprietorship concerns, partnership firms or Hindu Undivided Family (HUF).

2. The writ petition has been filed by the association on behalf of its members seeking a mandamus forbearing the respondents, being the, State of Tamil Nadu, represented by the Secretary to Commercial Taxes Department (in short, 'R1') and the Principal Secretary / Commissioner of Commercial Taxes (in short, 'R2') or officers working under them from assessing or recovering any sums under Section 13 of the Tamil Nadu Value Added Tax, Act, 2006 (in short, '2006 Act') from their members. They restrict their

prayer only to the 1087 members that are proprietorship concerns, partnership firms or HUF.

3. The preliminary objection that is raised is that of maintainability. Mr.T.N.C.Kaushik, learned Additional Government Pleader, who appears on behalf of the respondents would object to the maintainability of this writ petition pointing out that the Cloth Merchants Association cannot, by itself, be aggrieved by any action to be initiated by the respondents, as the association is not an assessee on the file of the Commercial Taxes Department.

4. The association, as a registered society cannot be said to be personally affected by the action of respondents and hence has no locus standi to have filed the present writ petition. The relief sought for by the association should thus have been pursued by the members individually and not by association itself. For this purpose, he relies on a slew of judgments that shall be discussed presently.

5. The second objection in regard to the aspect of maintainability is addressed towards the prayer itself, which is for a mandamus as against the respondents. Learned counsel urges that mandamus of this nature cannot / should not be considered or

granted by the Court for the reason that it is an overarching relief sought as against the statute. Thus it would not be appropriate for the Court to consider or grant such a wide prayer that would tantamount to directing the authorities to frame assessments in a particular manner.

6. Assessments must be framed as provided for under the provisions of the relevant enactment and thus while assessment or proceedings may be challenged by individual assessees, it is not for the association to seek such an omnibus prayer directing assessments be framed in a specified fashion.

7. Per contra, Mrs.Hema Murali Krishnan, learned counsel appearing for the petitioner's association would point out that the petitioner association comprises of members who are all engaged in identical kinds of businesses. The entirety of their prayer is premised upon a clarification issued by R1 to the effect that cloth manufacturers that are of the status of proprietary concerns, partnership firms or HUF are not affected by the rigour of tax deduction at source (in short, 'TDS') in terms of Section 13(1) of the Act.

8. Thus and seeing as all members who are pursuing the prayer are identically placed, without distinction of activity or legal position, there is nothing to be gained by the respondents urging that 1087 writ petitions be filed and it would far better to pursue the matter by way of a common writ petition.

9. Incidentally, she will point out that notices, and even orders of assessment in some cases, have been passed as against some members. The demands raised, in most cases are quite insubstantial, though the quantum in a few assesses, is in the region of lakhs also. Even on this score, she would submit that it would be a far more efficient remedy for the petitioners to file a single writ petition, which has what has been done. She relies on a Constitution Bench judgment of the Hon'ble Supreme Court in the case *Confederation of Ex-Servicemen Associations and Others v Union of India and others*[1].

10. Having heard both learned counsel, I would agree with the petitioner that the writ petition is maintainable. As pointed out, not just a common, but identical cause of action has been espoused by 1087 assesses. Though, I would hasten to add that their status i.e., whether they are proprietorship concerns, partnership firms or

1 (2006) 8 SCC 399

HUF constitutes a question of fact that this Court would not touch upon, their prayer in common is based upon a circular issued by R2 and hence I find nothing untoward in they having filed a single writ petition.

11. It is an admitted position that 1087 members who have filed this writ petition form a significant majority of all the association members and it is only 10, who would stand distanced from this cause of action.

12. The Hon'ble Supreme Court in the case of *Confederation of Ex-Servicemen Associations* (supra) was concerned with a challenge by that association to service terms and conditions. Even in that case, the Union of India had raised the objection of maintainability. The Bench considered the position that the Confederation was registered and was recognized even by the Ministry of Defence.

13. That apart, they also noted the position that the cause espoused in the writ petition by the Confederation was identical across all members. At paragraph 22 the Bench states as follows:-

> *"22. We have given anxious and thoughtful consideration to the rival contentions raised by*

the parties. So far as the preliminary objection regarding maintainability of the petition is concerned, it may be stated that the petitioner has asserted in the petition that it is a confederation of five ex-servicemen associations formed in furtherance of a common cause. The aims and objects of the Confederation have also been annexed as set out in the MoU(Annexure P1). In the affidavit in reply filed by Under Secretary working with the Ministry of Defence, it was stated that he is "not aware" of the existence of the petitioner organization. He however stated that the organisation "does not seem" to be a registered body to represent the cause of exservicemen. The rejoinder affidavit unequivocally states that the objection raised by the Union of India is incorrect. The Confederation was registered under the Societies Registration Act, 1860. Likewise, all associations which constitute the Confederation are similarly registered individually. It is further stated that the Air Force Association and the Indian Ex-Service League are even recognized by the Ministry of Defence, Union of India. It, therefore, cannot be said that the petitioner Confederation is not registered and the petition filed is not maintainable. In vie of the fact that some of the associations have been recognized even by the Ministry of Defence, the deponent ought not to have rasied the objection regarding maintainability of the petition without ascertaining full facts and particulars. We leave the matter there holding the petition maintainable"

14. They make reference to a judgment of the Hon'ble Supreme Court in the case of *D.S.Nakara and others v Union of India*[2], wherein also a similar set of facts and legal position had

2 (1983) 1 SCC 305

been discussed and decided by the Bench in favour of those petitioners.

15. In the present case as well, the petitioner association is registered under the provisions of the Tamil Nadu Societies Registration Act, 1975. Though the association is not recognized as an assessee by the Commercial Taxes Department, in my considered view, this would not stand in the way of the maintainability of this writ petition itself since admittedly, the cause of action espoused by all the members before the Court is identical, and relates to clarification dated 04.11.2015.

16. I also find merit in the contention that there is really no necessity for this Court to entertain 1087 separate writ petitions when there is no difference or distinction between the cause of action that is espoused. What would differ between one case and another relates only to the quantum of turnover in dispute. The quantum is really immaterial for the reason that the cause of action in the writ petition concerns only the position of law. For the reasons as aforesaid, this writ petition is held to be maintainable on the first score.

17. Coming to the second argument on maintainability, I agree with the respondents that mandamus of the nature sought for is not liable to be granted. The petitioners pray for a direction that respondents must not assess or recover any sums under Section 13 of the Act. Section 13 deals with deduction of tax at source in works contract and fastens, on 'every person' responsible for paying any sum to any dealer for execution of works contract, the necessity to deduct an amount calculated at certain stipulated rates.

18. Such responsibility to deduct tax at source would not vest in those persons defined in the explanation to under Section 13(1) to be the Central or State Government, Local Authority, Corporation or Body established by or under a Central or State Act, Company incorporated under the 1956 Companies Act, society including a cooperative society, educational institution or a trust. Thus the statutory position supports the position that the responsibility of tax deduction falls only upon certain specified persons and proprietorships, partnership firms and HUF stand excluded from this responsibility.

19. In the present case, the petitioner states that 1087 members whose cause it espouses are proprietary concerns,

partnership firms or HUF. This is question of fact. That apart, individual assessee / members have received notices from the respondents and it is for them to respond to those notices clarifying and establishing their status, as to whether they are indeed proprietary concerns, partnership firms or HUF. Failure to do so will entail consequences that they must suffer. Likewise, adverse orders of assessment could also be challenged relying upon the relevant provisions of law. I leave this matter at that.

20. The objection raised on merits by learned counsel for the respondent is that the clarification issued by R2 is not binding upon the respondents for the reason that it has no statutory sanction. To clarify, there is no provision available under the Act that empowers the Principal Commissioner / Commercial Taxes Department to issue a clarification, unlike in earlier Sales Tax enactments.

21. Be that as it may, this question really does not require an answer since all R2 has done is to extract the provisions of the Act itself. Clarification is really not needed for this purpose as Section 13(1) read with explanation thereto, is self explanatory.

22. In light of the discussion as above, this writ petition is disposed permitting those assessees who are in receipt of notices to file replies before the authority establishing their status. If they do establish their status to be either proprietary concerns, partnership firms or HUF, then evidently they would be protected by virtue of the statutory exclusion in the explanation to Section 13(1) of 2006 Act. It is also left open for the members of the petitioner association to raise such other objections to the notices as they may think tenable, including on the aspect of limitation. No costs. Connected miscellaneous petition is closed.

09.06.2023

Index:Yes/No
Neutral Citation:Yes/No
ssm

To:

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2.The Principal Secretary / Commissioner
of Commercial Taxes,
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DR. ANITA SUMANTH,J.

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