IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2024

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH
AND
THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

T.C.No.1326 of 2006

Tvl.Swastik Dye Chem Industries,
No.117/15, Broadway,
Chennai-1. ... Appellant

versus

1.The Commercial Tax Officer,
Esplanade-II Assessment Circle,
Kuralagam Annexe,
1st Floor, Chennai - 600 001.

2.The Sales Tax Appellate Tribunal,
City Civil Court Buildings,
Second Floor,
Chennai - 600 104. ... Respondents

PRAYER: Appeal filed under Section 38 of the Tamil Nadu General Sales Tax Act, 1959 against the order of the Tamil Nadu Sales Tax Appellate Tribunal, Chennai (Addl. Bench), dated 15.10.1999 in T.A.No.1034 of 1998.

For Appellant	:	Mr.C.P.Sivamohan
For Respondent	:	Ms.Amirtha Dinakaran Government Advocate

JUDGMENT

[*Judgment* of the Court was made by ***G.ARUL MURUGAN, J.***]

The appellant, who is a registered dealer in dyes, preferred the above appeal challenging the order of the Tamil Nadu Sales Tax Appellate Tribunal dated 15.10.1999. The question of law raised is as to whether the levy and collection of additional sales tax as per 2(1)(a) of the Tamil Nadu Additional Sales Tax Act, 1970 [in short, 'TNAST Act'] is illegal in view of the decision of the Special Tribunal in the case of ***Siemens Limited Vs. State of Tamil Nadu (110 STC 313)***.

2. The appellant had suffered an order of assessment *vide* proceedings of the Assessing Officer dated 15.07.1997 for the assessment year 1996-97, by which additional sales tax was levied for a turnover of Rs.69,28,115/- upto July, 1996. In the appeal preferred by the assessee challenging the additional sales tax levied, the Appellate Assistant Commissioner, by order dated 19.06.1998, confirmed the levy of additional sales tax in the first appeal. The order of the Appellate Assistant Commissioner was also further confirmed by the order of the Appellate Tribunal in the Second Appeal, by order dated 15.10.1999.

3. Assailing the same, the present appeal has been preferred by the assessee.

4. Heard the learned counsel for the appellant and the learned Government Advocate for the respondent and perused the materials available on record.

5. The appellant dealer was assessed a turnover of Rs.69,28,115/- upto July 1996, towards the additional sales tax under the Act in the assessment year 1996-97. The main challenge of the appellant in respect of the levy of additional sales tax is based on the contention that since the turnover had not exceeded the threshold of Rs.100 Crores during the year in question, the levy of additional sales tax imposed on the appellant is not sustainable.

6. It is the contention of the learned counsel for the appellant that in view of the amendment to the provisions of the Act, particularly Section 2(1)(a) of the TNAST Act, the threshold for the levy of additional sales tax is enhanced from Rs.10.00 lakhs to Rs.100 Crores. As per the amendment the original threshold of Rs.10.00 lakhs would stand in regard to casual traders or agents of non-resident dealers or local branches of a firm or company outside India and enhanced the threshold to Rs.100 Crores in respect of other dealers.

7. An identical issue in respect of the liability of the dealers to pay additional sales tax for the period from 01.04.1996 to 31.07.1996 where the turnover was in excess of Rs.10.00 lakhs even though the total turnover of the concerned assessee in the year was less than Rs.100 Crores came for consideration in the case of ***Indian Rayon & Industries Limited Vs. The Commercial Tax Officer and another*** in ***W.P.No.15039 of 2008*** and by order dated 22.10.2024, we had confirmed the order of the Tribunal holding that the assessing authority is bound to apply the provisions of the Act strictly from the date of insertion into the Act for the purpose of assessment. When admittedly the turnover of the assessee was beyond Rs.10.00 lakhs, for the period from 01.04.1996 to 31.07.1996, the assessee cannot avoid the liability under the TNAST Act. The relevant portion of the order is extracted hereunder:

*"**4**.The amendment to the provisions of Section 2(1)(a) of the TNAST Act as introduced stated that the original threshold of Rs.10.00 lakhs would stand in regard to casual traders or agents of non-resident dealers or local branches of a firm or company outside India, and enhanced the threshold to Rs.100 Crores in respect of other dealers.*

***5**.The amendment was itself challenged before the Tamil Nadu Taxation Special Tribunal which by its order in Siemens Ltd. V. State of Tamil Nadu (110 STC 313) held the same to be ultravires striking down clause (a) of Section 2 (1) of the TNAST Act. Hence parity was brought amongst all dealers in the threshold to be maintained for the levy of AST. The extant position in law hence, is that the threshold for levy of AST in terms of Section (2) of the TNAST Act stood amended, enhancing the threshold from Rs.10.00 lakhs to Rs.100 Crores with effect from 01.08.1996. There is no dispute on this position.*

***6**.The petitioner presses into service the observations of the Division Bench of this Court in the case of Philips India Limited V. Assistant Commissioner (CT), Fast Tract Assessment Circle II and others (137 STC 134). That was a case where that assessee had turnover in excess of Rs.100 Crores for the period 01.04.1996 and 31.03.1997. While interpreting the order of the Tribunal in Siemens Ltd., the Division Bench of this Court states as follows:*

> *'8. Even assuming that there was no liability to pay and there was no provision regarding payment of additional sales tax between April 1, 1996 and July 31, 1996, the annual turnover of the petitioner for the assessment year 1996-97 was admittedly more than Rs.100 crores. It is immaterial that the taxable turnover for the period from August 1, 1996 to March 31,1997 did not exceed Rs.100 crores. Even assuming that the liability to pay additional sales tax arose only with effect from August 1, 1996, the contention that the taxable turnover after the said date alone could be considered is also not tenable. The assessing officer was justified in coming to a conclusion that the taxable turnover for the period between April 1, 1996 and March 31, 1996 being more than Rs.100 crores, the petitioner was liable to pay additional sales tax even as per the amended provision as contained in section 2(1)(aa).'*

7.The petitioner seeks to argue, based on the observations at paragraph 8 above, there should be no liability for AST at all based on the factual position that the entirety of its turnover was less than Rs.100 crores.

__8__.Mr.Haja Nazirudeen, learned Additional Advocate General assisted by Mr.G.Nanmaran, learned Special Government Pleader for the Commercial Taxes Department, would disagree with the interpretation put forth reiterating the settled position that an amendment must be given effect to from its effective date and not retrospectively, unless specifically provided. For this purpose, he would press into service the decision of this court in State of Tamil Nadu V. National Time Co. (39 VST 247).

__9__.Having heard the rival contentions of both parties, we agree with the contention put forth by the Commercial Taxes Department. The amendment to the TNAST is effective from 01.08.1996. As a result of this amendment, the threshold for the levy of AST stood enhanced from Rs.10.00 lakhs to Rs.100 Crores.

__10__.It is true that if the turnover of the writ petitioner is taken for the year in entirety, it would be less than a sum of Rs.100 Crores. However for the purpose of assessment, the assessing authority is bound to apply the provisions of the Act strictly from their dates of insertion into the Act. Hence for the period 01.04.1996 to 31.07.1996, as the turnover of the petitioner is in the region of Rs.15.66 Crores, which is far in excess of Rs.10.00 lakhs, the petitioner cannot avoid liability under the TNAST Act."

8. In the instant case, admittedly the turnover of the appellant for the period from 01.04.1996 to 31.07.1996 is to the tune of Rs.69,28,115/-, which is in excess of Rs.10.00 lakhs. In view of the above referred decision, the appellant assessee cannot avoid the liability under the Act.

9. In view of the same, we do not find any error or infirmity in the conclusion arrived at by the Tribunal and accordingly, we confirm the order dated 15.10.1999.

10. In the result, this Tax Case stands ***dismissed.*** There shall be no order as to costs.

[A.S.M.J.,] **[G.A.M.J.,]**
24.10.2024

Speaking order / Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
sri

To

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