IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.10.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

Writ Petition No.15039 of 2008

Indian Rayon & Industries Limited,
represented by its Senior Vice President,
B.Venugopal,
304-E T.T.K. Road,
Alwarpet, Chennai 600 018. .... Petitioner

Vs

1.The Commercial Tax Officer,
Mylapore Assessment Circle,
46 Greenways Road,
Chennai 600 028.

2.The Sales Tax Appellate Tribunal (Main Bench),
represented by its Secretary
City Civil Court Buildings
High Court Complex
Chennai 600 104. .... Respondents

PRAYER: PETITION under Article 226 of the Constitution of India praying for issuance of writ of Certiorarified Mandamus to call for the records on the files of the Second Respondent herein, in T.A.No.180/2004 dated 11.12.2007 and quashing the confirmation of the turnover tax under the Tamil Nadu Additional Sales Tax Act, 1970 for the period, from 01.04.1996 to 31.07.1996, as ordered by the First Respondent in its proceedings in T/0700221/96-97 dated 29.11.2002, and direct refund of Rs.39,15,011/-.

For Petitioner : Mr.K.A.Parthasarathy
for Mr.N.Inbarajan

For Respondents : Mr.Haja Nazirudeen,
Additional Advocate General
assisted by Mr.G.Nanmaran (for R1)
Special Government Pleader

Tribunal – R2

O R D E R
(Order of the Court was made by Dr.ANITA SUMANTH,J.)

The petitioner challenges order of the Tamil Nadu Sales Tax Appellate Tribunal (in short 'STAT'/'Tribunal') dated 11.12.2007. The petitioner had suffered an order of assessment for the period 1996-97 by proceedings dated 24.08.1999. On appeal, the assessment was remanded to the Assessing Officer by the Appellate Assistant Commissioner (AAC), vide proceedings dated 17.01.2001. While giving effect to the remand order, Additional Sales Tax (AST) had been levied on taxable turnover of a sum of Rs.15,66,00,424/- for the period 01.04.1996 to 31.07.1996 in terms of the provisions of the Tamil Nadu Additional Sales Tax Act, 1970 (in short 'TNAST Act').

2. The petitioner has challenged the levy of AST before the AAC in first appeal and thereafter before the Tribunal in second appeal. Its contention was that the turnover had not exceeded the threshold of Rs.100 Crores during the year in question and hence there was no levy of AST that was envisaged in law.

3. Mr.Parthasarathy, learned counsel for the petitioner, would assail the

order of the Tribunal drawing attention to the position that there had been an amendment to the provisions of the TNAST Act, as per which, the threshold for the levy of AST stood enhanced from a sum of Rs.10.00 lakhs to Rs.100 Crores.

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 beween 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.

11. We hence agree with the conclusion of the Tribunal and confirm order dated 11.12.2007. This Writ Petition is dismissed. No costs.

(A.S.M.,J) (G.A.M.,J)
22.10.2024

Index:Yes
Speaking order
Neutral Citation: Yes
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