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W.P.No.2142 of 2004

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2024

CORAM :

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

Writ Petition No.2142 of 2004

Tvl.Sri Manickka Vinayagar Spinning Mills Ltd.,
rep. by Director Vetrivelkannan,
163, Nethaji Road, Madurai – 1.

.... Petitioner

Vs

The Commercial Tax Officer (FAC),
Nethaji Road Assessment Circle,
Madurai – 20.

.... Respondent

PRAYER : PETITION filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records on the file of the respondent herein in CST 146752/2001-02 dated 26.12.2003 and quash the same in so far as levy of higher rate of tax of 10% on the petitioner's inter-state sales turnover of polyester fibre yarn of Rs.1,20,64,407.00 as against the Notification No.II(1)/CTRE/43(d-7)/98 issued in G.O.Ms.No.111, Commercial Taxes and Religious Endowments, dated 7.4.98 as amended in Notification No.II(1)/CT/40(a-



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4)/99 issued in G.O.Ms.No.61, Commercial Taxes, dated 17.3.99 reducing rate of tax to 2% on the inter-state sale of polyester fibre yarn by any dealer who does not have any branch transfer or consignment transfer during the year.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.V.Prashanth Kiran
Government Advocate

ORDER

(Order of the Court was made by Dr.ANITA SUMANTH.,J)

The assessment in this matter relates to the period 2001-02 (period in question). The impugned order of assessment dated 26.12.2003 has been passed under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short 'TNGST Act').

2. The petitioner is a manufacturer and dealer in polyester fibre yarn. In respect of the period in question, it had offered to tax the turnover from the sale of polyester fibre yarn at the rate of 2% taking the benefit of Notification in G.O.Ms.No.111, Commercial Taxes and Religious Endowments, dated 07.04.1998 (in short 'Notification'), which reads as follows:

*REDUCTION OF TAX PAYABLE ON SALE OF
MANMADE STAPLE FIBRES, ETC. UNDER CENTRAL*



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SALES TAX ACT

(G.O.Ms.No.111, Commercial Taxes and Religious Endowments, 7th April 1998).

No.II(1)/CTRE/43 (d-7)/98.

In exercise of the powers conferred by sub-Section (5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), the Governor of Tamil Nadu having been satisfied that it is necessary so to do in the public interest hereby directs that the tax payable by any dealer who does not have any branch transfer or consignment transfer during the year, shall be calculated at the reduced rate of two percent in respect of the sale effected by him in the course of inter-state Trade or Commerce of manmade staple fibres, fibres yarn, filament yarn and waste of any of them.

2. This Notification shall come into force on the 7th April 1998 and shall remain in force upto and inclusive of the 26th March 1999.

3. The Notification, issued under Section 8(5) of the Central Sales Tax Act, (in short 'CST Act') was issued alongside the then existing rate of tax of turnover from sale of polyester fibre yarn, being 8% under Entry 27, Part B of Schedule I upto 17.08.2001 and 4% against 'C' forms from 18.08.2001 under Entry 94 Part B of Schedule I.

4. The petitioner's claim of 2% was based on the Notification that did not stipulate any other conditions barring that the dealer in question should not have engaged in branch/consignment transfer during the relevant year.

5. The impugned assessment has come to be completed bringing to



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tax the turnover at the rate of 10%, as the assessing officer was of the view that the petitioner is entitled only to the rate of tax stipulated under the Schedule read with Section 8(4) of the CST Act. Since no 'C' forms had been filed by the petitioner, the assessing authority has proceeded to bring to tax the turnover at the rate of 10%.

6. The submissions made by Mr.Chandrasekaran, learned counsel for the petitioner are that the Notification would run in parallel with the stipulations under the relevant schedules. Relying on the judgments in *Deputy Commissioner of Sales Tax V. Aysha Hosiery Factory (P) Ltd.* (85 STC 106) and *Sri Ayyanar Spinning and Weaving Mills Limited V. State of Tamil Nadu* (109 STC 205), he would point out that the assessing authority has erred in imposing the condition relating to 'C' form over and above what has been contained in the Notification. In any event, there is no basis for the levy of tax at the rate of 10%.

7. Per contra, Mr.Prashanth Kiran, learned Government Advocate would defend the impugned order relying on the judgment of the Supreme Court in *State of Rajasthan and another V. Sarvotam Vegetables Products* (101 STC 547).

8. The issue for consideration in this matter is as to whether the



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Notification under Section 8(5) would run in parimeteria with the rates of tax stipulated in the Schedule and whether the conditions stipulated in Section 8(4) have to be read into the Notification itself.

9. Section 8 relating to '*Rates of tax on sales in the course of inter-State trade or commerce*' is a self-contained code. Section 8(1) provides that any sale in the course of inter-state trade shall be liable to tax at the rate of 3% or at the rate applicable to the sale or purchase of such goods inside the appropriate State under the sales tax law of the State, whichever is lower. Sub-Sections (2) and (3) are not relevant for the purpose of the present controversy.

10. Sub-Section (4) states that the rate stipulated under sub-Section (1) would not apply unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer to whom the goods are sold. That declaration, referred to as 'C' form should contain the prescribed particulars in the form obtained from the concerned assessing authority.

11. Sub-Section (5) with which we are presently concerned, endows the State to, by Notification in the official gazette extend such beneficial terms and conditions on taxability as the State may consider



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necessary in public interest and may in this regard, impose such conditions as it believes necessary.

12. It is relevant to note that sub-Section (5) starts with a non-obstante clause and reads thus:

*(5) Notwithstanding anything contained in this section, the State Government may **on the fulfillment of the requirements laid down in sub-section (4) by the dealer** if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette and subject to such conditions as may be specified therein direct,.....*

13. The portion in bold as above, has been inserted vide Section 152(v) of the Finance Act (No.20 of) 2002, with effect from 11.05.2002. Hence, the interplay between sub-Section (4) and sub-Section (5) of Section 8 would commence only on and from 11.05.2002 and for the period prior thereto, there would be no necessity for any dealer, who seeks benefit of the Notification under sub-Section (5) to have complied with the provisions of Section 8(4).

14. The above interpretation is clear from a plain reading of sub-Sections (4) and (5) of Section 8. In addition, useful reference may be made to the judgment of 3 Judges of the Supreme Court in the case of



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Aysha Hosiery Factory (P) Ltd. (supra).

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15. In that case, the appeals filed by the revenue before the Supreme Court contested orders of the Kerala High Court. The respondents/assesseees in that matter were dealers under the Kerala General Sales Tax Act, 1963 and engaged in the business of coir. They had contested the levy of additional sales tax taking the benefit of certain Notifications that they claimed had been issued under Section 8(5) of the CST Act.

16. The provisions of Section 8 were examined in detail and the Supreme Court has returned the conclusion that Section 8(5) is a self-contained code that does not depend on any of the other provisions of Section 8 for its sustenance. Hence any benefit either by way of Circular or Notification under Section 8(5) would stand alone and the benefit granted thereunder would not depend on the satisfaction/compliance of any of the other provisions of the Act, including the other sub-Sections of Section 8. The relevant portion of the judgment reads as follows:

.....When the assessing authorities sought to levy the additional tax imposed under the additional [Sales Tax Act, 1978](#) in respect of the inter- state sale and called upon the assesseees to pay at 1.1%, the dealers questioned the assessment orders on the ground that when once a notification has been made under [Section 8\(5\)](#) of the



Central Sales Tax Act fixing the rate for purposes of C.S.T. any change in the rate of tax under the local act will have no impact on the notification itself unless the notification also is modified or amended giving effect to the amendment. This contention was accepted by Kochu Thommen. as he then was, in the judgment in the [Janatha Expeller Co. & Ors.](#) case (supra). No exception could be taken to this view of the learned Judge. Because [section 8\(5\)](#) of the Central Sales Tax Act is a provision which enable the State Government if it was of the view that it was necessary to do so in the public interest to completely exempt the inter-state sales from payment of tax or reduce the tax payable under the Central Act in respect of inter- state sales. The section itself states the notification will have effect "Notwithstanding anything contained in [section 8](#)". Therefore when once a notification is made it will have effect propio vigor and even any amendment of the rate applicable to inter-state sale will not affect the notification under [section 8\(5\)](#) of the Central Sales Tax Act as such unless the notification also is amended along with the amendment of the other provisions in the Section or the amended statute in law the effect of superseding the notification itself. In the case dealt with in [Janatha Expeller Co. & Ors.](#) (supra) the levy of additional sales tax could not affect the notification because the notification, though issued by the State Government, was made in exercise of the powers under section 8(5) of the Central Act enacted by the Parliament, and the Kerala Additional Sales Tax Act was made by the State Legislature and that could have the effect of superseding the notification. We may also point out that the learned Judge also had confined his decision to the notification and its effect though he had dealt with the scope of [section 8\(2-A\)](#) of the Central Sales Tax Act also in order to give better understanding of the provisions of [section 8\(5\)](#) of the Central Sales Tax Act. We are unable to see anything in this judgment to support the contention of the respondents-assessees that even in a



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case which is not covered by any notification under [section 8\(5\)](#) of the [CST Act](#) increase in the rate of tax under the local act will not have any effect on the applicability of [Section 8\(2\)\(b\)](#) and [8\(2-A\)](#) of the [CST Act](#). Further, for enhancing the rate notified under [section 8\(5\)](#) of the Central Sales Tax Act no reliance can be placed on [section 8\(2-A\)](#) of the [CST Act](#). However, while agreeing with the view of the learned single Judge the Division Bench on appeal in the case of [Assistant Commissioner \(Assessment\) Sales Tax](#) (supra) made certain further observation which in a way supported the contention of the assesseees. That passage reads as follows:

"We are also of the view, that even in cases where tax is exigible under [section 8\(2A\)](#) of the Central Sales Tax for the inter-State sales, the Kerala Additional Sales Tax Act, 1978 (Act 20 of 1978), has no application.

As stated already, in cases where the tax is payable under [section 8\(2A\)](#) of the Central Sales Tax Act, what is crucial or relevant is to ascertain, the appropriate sales tax law of the State, under which the tax is levied for the sale or purchase of the goods or the commodity, in question. Looked at from the angle, we have no doubt, that the appropriate sales tax law of the State, of which tax is levied, is the [Kerala General Sales Tax Act, 1963](#). The Kerala Additional Sales Tax Act, 1978(Act 20 of 1978), does not levy sales tax on the sale or purchase of the goods or commodity, in question. We hold that the provisions of Act 20 of 1978 are inapplicable to a situation, where inter-State sales are to be taxed under [section 8](#) or [section 8\(2A\)](#) or [section 8\(5\)](#) of the Central Sales Tax Act.



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In the first place these observations are in the nature of obiter in view of the fact that the learned Judges have accepted the interpretation placed by the learned single Judge that in respect of a case where a notification has been issued under [Section 8\(5\)](#) of the CST Act the amendment to the State Act will not have any effect on the notification. That should have been enough to dispose of the case but they have given an alternative reasoning which in our view is not correct and is against the provisions of [Section 8\(2-A\) of the CST Act](#) itself. For the purpose of applicability of [Section 8\(2-A\) of the CST Act](#) we have to look to the rate of tax applicable for the time being under the local Act at the time when the [CST Act](#) was enacted. Any amendment in the local Act ultimately will have a reflection in the assessment of the inter-state sales. We have already discussed the scope of [Section 8 \(2-A\) of the CST Act](#) and in the light of those reasonings the passage extracted above in the judgment of the Division Bench is contrary to law and could not be accepted.

17. The decision relied on by the revenue in the case of *Sarvotam Vegetables Products* (supra) is by a Division Bench of the Supreme Court and their attention was not drawn to the binding judgment in *Aysha Hosiery Factory (P) Ltd.* (supra), which has been delivered by a coram of 3 Hon'ble Judges. Hence, the position of law as laid down by the Bench of 3 Judges in *Aysha Hosiery Factory (P) Ltd.* (supra) would apply to the facts and circumstances of the present case.

18. Reference may also be made to the decision of the Jharkhand High Court in *Tata Motors Limited V. State of Jharkhand and others* (55



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VST 323). In that case, the benefit of reduced rate of tax per a Notification issued under Section 8(5) of the CST Act had been refused on the ground that the parties were unregistered dealers.

19. In that case as well, the assessee has unfortunately not brought to the notice of the Bench the judgment in the case of *Aysha Hosiery Factory (P) Ltd.* (supra) and what has been cited are the judgments *Sarvotam Vegetables Products* (supra) and several other judgments. However, and fortuitously for the assessee in that case, the High Court has been persuaded to make distinction between the applicability of a Section 8(5) Notification in the case of a transaction under Section 8(1) of the CST Act vis-a-vis a transaction under Section 8(2) of the CST Act.

20. In the former, the rate of tax stipulated is qua the registered dealer, whereas in the latter, the rate of tax stipulated is qua the unregistered dealer. In our respectful opinion, this distinction is one without a difference as Section 8(5) makes no distinction between its applicability qua a situation falling either in Section 8(1) or 8(2), unless the Notification under Section 8(5) itself makes such distinction, stipulating that the reduced rate is applicable only on transactions falling either under Section 8(1) or 8(2). In the Notification in question, it is an



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omnibus reduction of rate and there is no denial of rate to any specific category of transaction.

21. In light of the discussion as aforesaid, the impugned order of assessment is quashed and this Writ Petition is allowed. No costs.

[A.S.M., J] [G.A.M., J]
08.11.2024

sl
Index: Yes
Speaking order
Neutral Citation: Yes

To

The Commercial Tax Officer (FAC),
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