IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2024

CORAM :

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

W.P.No.6206 of 2008

M/s.Coromandel Garments Ltd.,
No.21, Amabattur Industrial Estate,
Chennai – 600 058. .. Petitioner

vs

1.The State of Tamil Nadu
Rep. by its Secretary to Govt.,
Commercial Taxes & Religious Endowments Dept.,
Fort St.George, Chennai – 9.

2.The Secretary,
State of Tamil Nadu
Sales Tax Appellate Tribunal (Additional Bench),
Chennai City Civil Court Buildings,
Chennai – 104. ..
Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for records of the second respondent in its proceedings in T.A.No.433/2000 quash the order therein dated 19.11.2007 and hold that sale of quotas does not involve sale of goods for the levy of sales tax.

For Petitioner	:	Ms.Radhika Chandrasekhar for M/s.K.Vaitheeswaran
For Respondents	:	Mr.V.Prashanth Kiran Government Advocate for R1

ORDER

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

We have heard Ms.Radhika Chandrasekhar, learned counsel appearing for the petitioner and Mr.V.Prashanth Kiran, learned Government Advocate, appearing for the respondents.

2. The petitioner challenges order dated 19.11.2007 passed by the Tamil Nadu Sales Tax Appellate Tribunal (in short, 'Tribunal). The petitioner is a manufacturer of ready-made garments and suffered an order of assessment dated 17.03.1999 in respect of Assessment Year (AY) 1996 – 97 in terms of the Tamil Nadu General Sales Tax Act, 1959 (in short, 'Act').

3. The sum and substance of that assessment related to taxability of export quota sales to various countries. The petitioner had sought an exemption based on the Export Entitlement Certificates issued under the Garment Export Entitlement Policy framed by the Apparel Export Promotion Council, New Delhi.

4. The assessment proceeded on the basis that the petitioner had received premium on quota sales but had not offered the same to tax. Thus, the premium was proposed to be brought to tax under the Act at the rate of 11% and the proposal was confirmed despite objections raised by the petitioner.

5. An appeal was filed before the first Appellate Authority, who sustained the assessment though deleting the penalty levied under

Section 12(3)(b) of the Act. As against the same, petitioner filed an appeal before the Tribunal.

6. At the stage of assessment and first appeal, the stand of the petitioner was to the effect that premium on quota sales would not constitute goods exigible to tax under the Act.

7. Pending second appeal, that issue came to be decided on 01.05.1996 by three Judges of the Apex Court in the case of *Vikas Sales Corporation v Commissioner of Commercial Taxes*[1]. With this, the taxability of premium on quota sales or other duty entitlement scrips, is no longer in doubt.

8. It is for this reason that the petitioner does not attack the taxability of the quota premium itself, but proceeds on a tangential argument. Learned counsel for the petitioner would argue that for the relevant period i.e., 1996 - 97, there was no specific entry in the Schedule that dealt with quota premium till 08.09.1998. There was however a specific entry relating to REP Licence effective for the period 05.03.1997 to 07.09.1998. The entry relating to quotas was inserted only later and hence there is no justification in the Assessing Authority having brought to tax the quota premium under a residuary entry.

9. The defence of respondent counsel is that while a specific entry relating to taxability quotas did come to be inserted only at a later point in time, it was precisely for this reason that the assessing

1 2017 (354) ELT 6 (SC)

authority had invoked the residuary entry in bringing the export premium to tax. He relies on:- *(i) Yasha Overseas v Commissioner of Sales Tax*[2], *(ii) Bharat Fritz Wernet Ltd v Commissioner of Commercial Taxes and another*[3], *(iii) Bharat Fritz Werner Ltd v Commissioner of Commercial Taxes, (iv) P.S.Apparels v Deputy Commercial Tax Officer, T.Nagar East Assessment Circle, Madras*[4] *and (v) Vikas Sales Corporation and another v Commissioner of Commercial Taxes and another*[5].

10. Having heard the rival contentions put forth by both learned counsel, we are of the view that the Revenue must succeed. The period in question is 1996 – 97. Entry 46-A addressing REP licences and quotas as it stood from 03.5.97 to 31.03.99 is extracted below:-

> *"46-A ENTRY FROM 5-3-1997 TO 7-9-1998*
>
> *REP licence / Exim Scrip*
>
> *ENTRY FROM 8-9-1998 to 31-3-1999(omitted from 1-4-1999)*
>
> *Patents, trade marks, import licences including eximscrips, export permit or licence or quota and other goods of incorporeal or intangible character*
>
> *Note: 1. Entry inserted by Act 40/97 – Gazette dated 19-5-1997 w.e.f. 5-3-1997 (Retrospective).*
> *2. The expression "Patents, trade marks, import licences including exim scrips export permit or licence or quota and other goods of incorporeal or intangible character" was*

2 (2008) 17 VST 182
3 1992 86 STC 170
4 (1994) 94 STC 139
5 (1996) 102 STC 106

substituted for the expression "REP licence / Exim Scrip" by Act 20/98-Gazette dated 18-6-1998 w.e.f 8-9-1998 (Date of effect was notified by G.O.Ms.No.260 CT dated 8-9-1998-Nontn.No.II(2)/CT/1694(g)/98-Gazette dated 8-9-1998).

3. This entry was omitted by G.O.Ms.No.73 CT dated 27-3-1999-Notn.No.II(1)/CT/40(d-15)/99-Gazette dated 27-3-1999-Effective from 1-4-1999-Act 26/99-Gazette dated 17-6-1999.

4. See item 47-C of Part B for the goods taxable at 4% with effect from 1-4-1999."

11. There is a residuary entry in Part D of Schedule I to cover the taxability of those goods which are not specified under any Entry in that Schedule. Entry 63/Part D/Sch I covers the taxability of all goods not specified elsewhere in any of the Schedules for the period between 12.03.93 - 16.07.96 replaced by and Entry 67, effective 17.07.96 onwards. Thus, in the absence of a specific Entry dealing with REP and quota licences, it is the residuary entry that will apply.

12. The specific argument of the petitioner is that since entries specific to REP licences and quotas have been inserted only from 5.3.97 till 07.09.1998 and 08.09.98 to 31.03.1999 respectively, there could be no assessments for those goods, for prior periods. We are not in a position to accept this argument in the light of Entry 67/Part D/ Sch I, being the residuary clause governing those goods not specifically dealt with under any other Entry. The residuary entry is well available to be invoked by the assessing authority. In fact, the decisions in

P.S.Apparels[6] and *Vikas Sales Corporation*[7] relate to the periods prior to 1998 and hence those assessments have been made, applying the residuary entries only.

13. In light of the discussion as aforesaid, we see no merit in this writ petition and dismiss the same confirming the impugned order of the Tribunal. No costs.

[A.S.M., J] [G.A.M., J]
12.08.2024

Index:Yes/No
Neutral Citation:Yes
ssm

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6 Foot Note supra 4
7 Foot Note supra 5

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