IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	15.09.2023
Pronounced On	03.01.2024

CORAM:
THE HON'BLE **MR.JUSTICE C.SARAVANAN**
W.P.Nos.764, 765 and 766 of 2015 and 30371 of 2019
and
W.M.P.Nos.30363, 30364 and 30365 of 2019
and
W.M.P.No.21680 of 2023

In W.P.Nos.764, 765 and 766 of 2015
Nokia India Private Limited,
No.A.1, Nokia Telecom SEZ SIPCOT Industrial Park,
Phase III, Sriperumbudur, Kancheepuram,
Represented by its Authorized Signatory
Mr.Surendra Kumar Raheja ... Petitioner

Versus

1.Deputy Commissioner (CT),
Office of the Deputy Commissioner (CT),
Enforcement (South),
PAJAM Building, 2nd Floor,
Greams Road,
Chennai – 600 006.
2.Joint Commissioner (Appeals),
PAJAM Building, Greams Road,
Chennai – 600 006.
3.State of Tamil Nadu,
through the Secretary,
Ministry of Finance
Secretariat, Fort St.George,
Chennai – 600 009. ... Respondents

Prayer in W.P.No.764 of 2015: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records comprised in the impugned order vide. CST/33813/2009/2010 and impugned notice both issued by the Respondent No.1 dated 12.12.2014 for the assessment year 2009-10.

Prayer in W.P.No.765 of 2015: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records comprised in the impugned order vide. CST/33813/2010-2011 and impugned notice both issued by the Respondent No.1 dated 12.12.2014 for the assessment year 2010-11.

Prayer in W.P.No.766 of 2015: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, calling for the records comprised in the impugned order vide. CST/33813/2011-2012 and impugned notice both issued by the Respondent No.1 dated 12.12.2014 for the assessment year 2011-12.

In W.P.No.30371 of 2019

Nokia India Private Limited,
No.A.1, Nokia Telecom SEZ SIPCOT Industrial Park,
Phase III, Sriperumbudur, Kancheepuram,
Represented by its Authorized Signatory
Mr.Surendra Kumar Raheja ... Petitioner

Versus

1.Joint Commissioner [CT]
Large Taxpayers Unit
Chennai – 600 008.
2.Deupty Commissioner (CT) – IV
Office of the Joint Commissioner [CT]
Large Taxpayers Unit
Chennai – 600 008.
Tamil Nadu.
3.Deputy Commissioner (CT),
Office of the Deputy Commissioner (CT),
Enforcement (South),

PAJAM Building, 2nd Floor,
Greams Road, Chennai – 600 006.

4.State of Tamil Nadu,
through the Secretary,
Ministry of Finance
Secretariat, Fort St.George,
Chennai – 600 009.

5.The Managing Director,
State Industries Promotion Corporation of
Tamil Nadu Limited,
19-A, Rukmani Lashmipathy Road,
Egmore, Chennai – 600 008. ...Respondents.

Prayer in W.P.No.30371 of 2019: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for the records of the Respondent No.4 comprised in the G.O.Ms.No.32 Industries (MIF.1) Department dated 28.03.2017 and any action taken in pursuance thereto, and quash the same as unconstitutional and consequently direct the respondents to remit and pay to the petitioner, the amount of investment promotion subsidy sanctioned in favour of the petitioner by the respondents.

For Petitioner	:	Mr.P.S.Raman Sr.Counsel for Mr.K.Prahalad Bhat and M/s.Karthick Sundaram (in all WPs.)
For Respondents	:	Mr.Haja Nazinudeen AAG1 Asst.by Mr.M.Venkateswaran SGP (T) and Mr.V.Prashanth Kiran GA (T) R1 to R4 in W.P.No.30371/2019 Respondents in W.P.Nos.764 to 766 of 2015. Mr.K.Palaniappan – R5 in W.P.No.30371 of 2015.

COMMON ORDER

By this Common Order all these writ petitions are being disposed of. In W.P.Nos.764 to 766 of 2015, the petitioner has prayed for quashing the respective assessment orders dated 12.12.2014 for the assessment years 2009-10 to 2011-12 passed by the 3rd respondent, the Deputy Commissioner (Enforcement) South. The details of the impugned order are detailed below:-

Sl.Nos.	Writ Petitions	Date	Tax demanded	Penalty Demanded
1.	WP.No.764 of 2015	12.12.2014	266,37,56,223	280,23,07,550
2.	WP.No.765 of 2015	12.12.2014	232,26,43,307	150,72,92,459
3.	WP.No.766 of 2015	12.12.2014	413,17,92,470	193,06,93,416
		Total		
Grand Total			Rs. 1535,84,85,425/-	

2. The impugned assessment orders dated 12.12.2014were passed by the 3rd respondent pursuant to the interim order dated on 25.6.2014 passed in W.A.Nos.712-714 of 2014.

3. In W.P.No. 30371 of 2019, the petitioner has prayed for a Certiorarified Mandamus to quash G.O(MS)No.32 Industries (MIF.1)Departmentdated 28.3.2017 issued by 4th respondent therein transferring the subsidy amount Rs.423,48,00,000/- (which was otherwise refundable to the petitioner) to the respondent Commercial Tax Department in view of the amount confirmed in the impugned assessment orders dated 12.12.2014 impugned in W.P.Nos.764 to 766 of 2015.

4. Aforesaid sum of Rs.423,48,00,000/- was refundable to the petitioner under G.O. (MS) No. 5 dated 12.1.2009. It has been ordered to be appropriated towards tax liability of the petitioner for a sum of Rs. 1535.85 crores as confirmed by the 3rd respondent vide impugned orders dated 12.12.2014.

5. The impugned assessment orders dated 12.12.2014 were purportedly passed by the respondent herein after considering the submissions made by the Petitioner for the assessment years 2009-10 to 2011-12 under the provisions of the Central Sales Tax Act, 1956.

6. Initially assessment orders dated 28.2.2014 were passed by the 3rd respondent for the assessment years 2009-10 to 2011-12. The petitioner had also filed appeals before the Appellate authority against these assessment orders dated 28.2.2014. These assessment orders dated 28.2.2014 were challenged by the petitioner in W.P.Nos.9077-79 of 2014 on the ground that they were passed in violation of principles of natural justice.

7. The petitioner, also filed W.P.Nos.9725-27 of 2014 and prayed for a direction to direct the Appellate Authority to hear the appeal without insisting on pre-deposit.

8. By an order dated 29.4.2014 in W.P.Nos.9077-79 of 2014, the assessment orders dated 28.2.2014 passed by the 3rd respondent herein were set aside. In view of the above order in W.P.Nos.9077-79 of 2014, W.P.Nos.9725-27 of 2014 were dismissed.

9. However, while allowing W.P.Nos.9077-79 of 2014 and setting aside the respective assessment orders dated 28.2.2014 for the respective assessment years, the learned single Judge directed the petitioner to deposit 10% of the disputed tax to the credit of the Commercial Department.

10. The petitioner, therefore, filed W.A.Nos.712-714 of 2014 against the aforesaid order dated 29.04.2014 in W.P.Nos.9077-79 of 2014 directing the pre-deposit of 10% of the tax confirmed in Assessment Orders dated 28.02.2014.

11. The Hon'ble Division Bench passed an interim order dated 25.06.2015, wherein it directed the 3rd respondent therein to re-do the assessment in the light of new evidences.The Hon'ble Division Bench also directed the 3rd Respondent to not to insist on payment of 10% of Deposit of Tax amount.

12. It appears that the W.A.Nos.712-714 of 2014 have not been disposed of on the date of hearing of these writ appeals. Suffice to state that the W.A.Nos.712-714 of 2014 may have become infructuous in the light of subsequent development in view of the impugned assessment orders dated 12.12.2014 of the 3rd respondent for the assessment years 2009-10 to 2011-2012.

13. The dispute in these writ petitions arise out of the alleged variance between the amounts declared by the petitioner in Annual Performance Report (APR) in Form-1 under the provisions of the Special Economic Zones Act, 2005 read with Rule 22 of the Special Economic Zones Rules 2006. In the impugned orders, the Annual Performance Report (APR) has been referred to as Annual Progress Report (APR).

14. It is the case of the respondent in the impugned orders, that the turnover declared by the petitioner under Rule 22 in Form-1 of the Special Economic Zone Rules, 2006 was much higher when compared to the total turnover declared under the returns filed under provisions of the Central Sales Tax Act, 1956.

15. Although the Petitions were filed on 07.01.2015, no counter affidavits have been filed by the respondent. The arguments were advanced primarily based on the averments in the affidavit filed in support of the respective writ petitions by the Petitioner and the supporting documents that were filed along with the respective writ petitions.

16. Challenging the impugned order, the Learned Senior Counsel for the Petitioner relied on the following cases:-

(i). **Dhirajlal Giridhalal vs. Commissioner of Income Tax**, AIR (1955) SC 271.

(ii). **A.V.Fernandez vs. State of Kerala**, AIR (1957) SC 657.

(iii).**Tata Engineering and Locomotive Co., Ltd., vs. Assistant Commissioner of Commercial Taxes and Another**, (1970) 1 SCC 622.

(iv).**Raza Textile Limited, Rampur vs. Commissioner of Sales Tax, U.P.Lucknow**, (1974) 33 STC 112.

(v).**Commissioner of Sales Tax, U.P., Lucknow and Others vs. Suresh Chand Jain, Tendu Leaves Dealer,Lalipur and Others** (1988) SCC (Tax) 450.

(vi).**Titan Medical Systems Pvt.Ltd vs. Collector of Customs, New Delhi** (2003) 151 E.L.T. 254 S.C

(vii).**Commissioner of Income Tax (Central)-1, New Delhi vs. Vatika Township Private Limited** (2015) 1 SCC 1.

(viii).**Nokia India Private Ltd., Rep. By its Authorized Signatory Ms.NilanjanaSur vs. The Deputy Commissioner (CT)-IV Large Tax Payers Union vs. Floor, Dugar Towers, No.34, Marshall Road, Egmore, Chennai-8 and 2 Others** (2014) SCC Online Mad 8988.

(ix).**Nokia India Private Ltd., Rep.by its Authorized Signatory M.S.Gajendrakumar, vs. The Assistant Commissioner (CT), Sriperumbudur Assessment Circle, Varadarajapuram, Chennai 123 and another** (2016) 3 LW 452.

17. Defending the impugned order, learned Additional Advocate General submitted that:

- Writ Petitions are liable to be dismissed
- Petitioners have an alternative remedy before the Appellate Authority under Section 51 of the TNVAT Act, 2006.
- The impugned order is well reasoned and requires no interference.

18. I have perused the impugned orders which have been passed purportedly in compliance of order dated 25.06.2014.

19. Ordinarily, this Court would have dismissed these writ petitions by relegating the petitioner to work out its Statutory remedy before the Appellate authority under the provisions of the TNVAT Act, 2006 as made applicable to the assessment under the provisions of the Central Sales Tax Act, 1956 in view of Section 9 read with Section 18- A of the CST Act, 1956.

20. A massive exercise is said to have been undertaken both by the petitioner and the respondent which has now culminated in the impugned orders dated 12.12.2014. These have been impugned in W.P.Nos.764-766 of 2015.

21. Assessment under the respective enactments i.e., the Central Sales Tax Act, 1956 (hereinafter referred to CST Act, 1956) and the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to TNVAT Act, 2006) are two sides of the same coin.

22. In **M/s. Onkarlal Nandlal Vs. State of Rajasthan and anr.** (1985) 4 SCC 404, it was observed as under:

> "*There is no antithesis between a sale in the course of inter-State trade or commerce and a sale inside the State. Even an inter-State sale must have a situs and the situs may be in one State or another. It does not involve any contradiction in saying that an inter-state sale or purchase is inside a State or outside it. The situs of a sale may fall for consideration from more than one point of view. It may require to be considered for the purpose of determining its exigibility to tax as also for other purposes such as the one arising in the present cases. Of course, a sale which is in the course of inter-State trade or commerce cannot be taxed by a State Legislature even if its situs is within the State, because the State Legislature has no legislative competence to impose tax on sale in the course of inter-State trade or commerce. That can be done only by Parliament. If therefore a question arises whether a sale is exigible to tax by the State Legislature, it may have to be considered whether it is a sale in the course of inter-State trade or commerce. The same sale in another context may have to be examined from a different point of view for determining where its situs lies and whether it is a sale inside the State or outside the State. There is therefore no incompatibility in the same sale being both a sale in the course of inter-State trade or commerce within the meaning of sec.3 of the Central Act as also a sale inside the State in accordance with the principles laid down in sub-s. 2 of sec.4 of the Central Act.*"

22A. In **Mohd.Sirajuddin Case** 1975 (2) SCC 47, it was observed as under:

> "*Although the exemption claimed for the sales as export sales was denied, the conclusion of the High Court that the sales to STC were inter-State sales chargeable under Section 5 (1) of the CST Act was upheld.*"

22B. However, the above ratio is not applicable to the facts of the present case. If there was no export, only inference that would be drawn is that there was a local sale.

22C. In **Bengal Immunity Co. Ltd. Vs. State of Bihar** AIR (1955) SC 661 while examining the scope and ambit of Article 286 of the Constitution and, in particular, the effect of *situs* of sale qua inter-State sale, it was observed as under:

> "*The truth is that what is an inter-state sale or purchase continues to be so irrespective of the State where the sale is to be located either under the general law when it is finally determined what is the general law is or*"

22D.In **State of Karnataka Vs. B.M.Ashraf and Co.** (1997) 8 SCC 468 it was observed as under:

"*Situs of sale is irrelevant as regards the sales being in the course of export.*"

23. Exports are zero-rated transactions under section 18 of the TNVAT Act, 2006. They are not liable to be taxed under the TNVAT Act, 2006 as they form part of the Central Sales Tax turnover of an assessee under the CST Act, 1956.

24. Similarly, inter-state sales turnover is also not liable to TNVAT Act, 2006 as they form part of the CST turnover of an assessee under the CST Act, 1956.

25. These turnovers are also not liable to Tax under the TNVAT Act, 2006 in view of Article 286 of Indian Constitution.

26. There are indications that the petitioner was engaged not only in intra-state stock transfer to its branch/depot inside the State but also inter-state stock transfer to its branch/depot outside the State apart from the exports from its factory in Special Economic Zone and its warehouse in Special Economic Zone in the State of Tamil Nadu.

27. In the case of intra-state stock transfer to its branch/depot within the state of Tamil Nadu, the petitioner would have generated Delivery Note in form JJ under Rule 15(3), Rule 15(18), Rule 15(20) and Rule 15(21) of TNVAT Rules, 2007.

28. In the case of inter-state stock to its branch/depot, outside the State of Tamil Nadu, such branch/depot would have issued a suitable Form-F to the petitioner. Such inter-state stock transfers/depot to its branch outside the State would have been liable to tax under local VAT enactments on further sale from such from its inter-state branch/depot outside the State of Tamil Nadu.

29. There should have been proper correlation of documents. To the extent, the petitioner was unable to prove intra-state/ inter-statestock transfer to its branch/depot, tax implication would be different under the respective enactments. For inter-state branch/depot transfer outside the State, where the petitioner was unable to produce documents, Section 6(A) 3 of the CST Act, 1956 would be applicable.

30. Similar eventuality has not been provided where exemption on exports turnover is denied under CST Act, 1956 or where there are no documents to substantiate inter-state sale under the CST Act, 1956.

31. That apart, as a consequence of the denial of the exemption on a part of the export turnover allegedly short declared when compared with the Annual Performance Report (APR) in Form I under the provisions of Special Economic Zones Act, 2005 read with Rule 22 of the Special Economic Zones Rules, 2006, demand should have been made under the provisions of the TNVAT Act, 2006.

32. Denial of exemption on export under the provisions of the CST Act, 1956 will have an impact on assessment under TNVAT Act, 2006. If exports are not proved, such turnovers are liable to be taxed under the TNVAT Act, 2006. Therefore, as *sequitur,* a revised assessment order under TNVAT Act, 2006 should have been passed by invoking the machinery under the said Act. Demands on such turover cannot be made under CST Act, 1956 in absence of any notice to infer inter-state sale.

33. Similarly, to the extent, the petitioner was unable to prove inter-state sale, the petitioner should have been taxed under the TNVAT Act, 2006.

34. Therefore, suitable demand notices ought to have to be issued under the provisions of the Tamil Nadu Value Added Tax Act, 2006, if exemption was wrongly claimed under the CST Act, 1956 or where inter-state sale is not proved. There has to be a proper and clear assessment. There should have been the proper tabulation and proper explanation in the impugned orders dated 12.12.2014.

35. As this exercise has not been carried out by the assessing officer in a cogent manner in the impugned orders despite, they being lengthy, it has to be construed that the impugned orders are unintelligible and are arbitrary. The impugned orders dated 12.12.2014 lack clarity.

36. Therefore, the impugned assessment orders dated 12.12.2014 passed by the third respondent for the assessment years 2009-10 to 2011-12 are liable to be quashed on this ground alone with a direction to pass fresh orders.

37. It is noticed that the petitioner has closed down its operations in the State and exited from SEZ. It has no operations in Tamil Nadu.

Therefore, the aforesaid amount of Rs.423,48,00,000/- appropriated in the impugned G.O (MS) No. 32 Industries (MIF.1) Department dated 28.3.2017 which is otherwise payable to the Petitioner can be ordered to be refunded at an appropriate time if the proceedings against the petitioner are dropped by the 3rd Respondent in the *de novo* proceedings.

38. Therefore, the amount Rs.423,48,00,000/- which was appropriated vide impugned G.O (MS) No. 32 Industries (MIF.1) Department dated 28.3.2017 is ordered to be refunded subject to final order to be passed by the 3rd respondent pursuant to the order in W.P.Nos.764-66 of 2015. Therefore, W.P.No.30371 of 2019 is liable to be dismissed.

39. In view of above discussions:-

(i). Impugned assessment orders dated 12.12.2014 passed by the 3rd respondent for the assessment years 2009-10 to 2011-12 are quashed and cases are remitted back to the 3rdrespondent to pass a fresh order;

(ii). 3rd respondent shall pass such fresh orders after hearing the petitioner within a period of six months from the date of receipt of this order;

(iii). W.P.Nos.764-66 of 2015 are allowed with the above observations;

(iv). Miscellaneous petitions in W.P.Nos.764 to 766 of 2015 are closed. There shall be no order as to costs.

(v). The amount of Rs.423,48,00,000/- shall be refunded back together with interest under the Acts, in case the petitioner succeeds in the remand proceedings. W.P.No. 30371 of 2019 is disposed of with above observations. There shall be no order as to costs. Connected Miscellaneous petitions are also closed.

03.01.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citations : Yes/No
nst

To:

1.Joint Commissioner [CT]
Large Taxpayers Unit
Chennai – 600 008.

2.Deupty Commissioner (CT) – IV
Office of the Joint Commissioner [CT]
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5.The Managing Director,
State Industries Promotion Corporation of
Tamil Nadu Limited,
19-A, Rukmani Lashmipathy Road,
Egmore, Chennai – 600 008.

C.SARAVANAN, J.

nst

Pre-Delivery Common Order made
in
W.P.Nos.764, 765 and 766 of 2015 and 30371 of 2019

03.01.2024