

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/05/2004

CORAM

THE HONOURABLE MR. JUSTICE A.S. VENKATACHALAMOORTHY
AND
THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.3739 of 2002

Philips India Limited,
No.3, Haddows Road,
Chennai 600 006. .. Petitioner

-Vs-

1. The Assistant Commissioner (CT),
Fast Track Assessment Circle II,
P.A.P.J.M. Building, III Floor,
Greens Road, Chennai 600 006.

2. The State of Tamil Nadu,
rep. by the Secretary to Govt.,
Department of Commercial Taxes and
Religious Endowments,
Fort St. George, Chennai 600 009.

3. The Registrar,
Tamilnadu Taxation Special Tribunal,
Singaravelan Maligai, II Floor,
Chennai 600 001. .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorari to quash the order passed in O.P. No.584 of
2001 dated 28.9.2001 confirming the order of the first respondent dated
1.8.2001. as stated therein.

!For Petitioner : Mr.C. Natarajan
Senior Counsel for
Mr.N. Inbarajan

^For Respondents : Mr.T. Ayyasamy
Special Govt. Pleader (Taxes)

:J U D G M E N T

P.K. MISRA, J.

In order to appreciate the contentions raised on behalf of the parties, it is necessary to notice the relevant provisions in a historical perspective. Section 2(1)(a) of the Tamil Nadu Additional Sales Tax Act, as it stood prior to 1.8.1996, was to the following effect:-

□ Section 2: Levy of additional tax in the case of certain dealers.

-- (1)(a) The tax payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereinafter in this section referred to as the

said Act), shall, in the case of a dealer whose taxable turnover for a year exceeds ten lakhs of rupees, be increased by an additional tax calculated at the following rates, namely :

Rate of Tax

(i) Where the taxable turnover 1.5 per cent of the exceeds ten lakhs of rupees, taxable turnover but does not exceed one crore of rupees :

Provided that no additional tax shall be payable under this item for the first ten lakhs of rupees of the taxable turnover.

(ii) Where the taxable turnover 2 per cent of the exceeds one crore of rupees but taxable turnover does not exceed five crores of rupees.

(iii) Where the taxable turnover 2.25 per cent of the exceeds five crores of rupees but taxable turnover does not exceed ten crores of rupees

(iv) Where the taxable turnover 2.5 per cent of the exceeds ten crores of rupees but taxable turnover does not exceed three hundred crores of rupees

(v) Where the taxable turnover 3 per cent of the exceeds three hundred crores taxable turnover of rupees

2. The aforesaid provision was amended by Act 31 of 1996 and in place of the expression "dealer", the words "a casual trader or agent of a non-resident dealer or a local branch of a firm or company situate outside the

State[] was substituted. The amending Act also provided for insertion of clause (aa) after clause (a) to the following effect :-

2. Levy of additional tax in the case of certain dealers. -- (1)(aa)

The tax payable under the Tamil Nadu General Sales Tax Act, 1959 (Tamil Nadu Act 1 of 1959) (hereinafter in this section referred to as the said Act), shall, in the case of a dealer including the principal selling or buying goods through agents whose taxable turnover for a year exceeds one hundred crores of rupees, be increased by an additional tax calculated at the following rates, namely :

Rate of Tax

(i) Where the taxable turnover 2.5 per cent of the exceeds one hundred crores taxable turnover of rupees but does not exceed three hundred crores of rupees

(ii) Where the taxable turnover 3 per cent of the exceeds three hundred crores taxable turnover of rupees

Explanation 1. - []Taxable turnover[] for the purpose of this clause in respect of a principal selling or buying goods through agents shall be the aggregate taxable turnover of all his agents relating to the sale or purchase of the goods of such principal within the State.

3. Such amendment came into force with effect from 1.8.1996.

The nett result of such amendment was to the effect that the registered dealers within the State were liable to pay additional sales tax only if their taxable turnover exceeded Rs.100 crores, whereas, a casual trader and agent of a non-resident dealer and a local branch of a firm or company situated outside the State were liable to pay additional tax if their taxable turnover exceeded Rs.10 lakhs. Of course the additional sales tax payable varied according to quantum of taxable turnover.

4. After such amendment was brought into force, the provisions were challenged before the Tamil Nadu Special Taxation Tribunal on the footing that there was violation of Article 301 of the Constitution and the provisions were discriminatory. The Tribunal in the reported judgment cited above, came to the conclusion that [] the impugned Act is in violation of Articles 301,303 and 304(a) of the Constitution of India[]. After discussing the matter further, the Tribunal directed as follows :-

[] To give effect to the said intention we proceed to hold that clause (a) of sub-section (1) of section 2 of the principal Act, namely, Act 14 of 1970 is ultra vires and should stand deleted. We make it clear that we are striking down only clause (a) of section 2(1). We also make it clear that under section 2(2) and 2(3) the intention of the Legislature not to pass on the burden of additional sales tax to the consumers and the reference to prosecution, shall stand unaltered. So far as section 2(1)(aa) as amended by Tamil Nadu Act 31 of 1996, the following words shall stand deleted, as obnoxious :

(1) The words "in this State" after the words, "Principal selling or buying goods" in section 2(1)(aa) as well as in Explanation to section 2(1)(aa).

(2) The words "other than a casual trader or agent of a nonresident dealer or a local branch of a firm or company situated outside the State" in section 2(1)(aa).

If the above directions are carried out the exemption granted upto rupees one hundred crores will be equally applicable to all dealers....

5. Now, the facts. The petitioner was assessed to sales tax under the Tamil Nadu General Sales Tax Act for the assessment year 1996-97 on a total turnover of Rs.147,31,85,717/- and a taxable turnover of Rs.134,31,10,139/-. Initially the Assessing Officer levied additional sales tax on a taxable turnover of Rs.41,85,25,152/- for the period from 1.4.1996 to 31.7.1996, even though taxable turnover for the assessment year was Rs.134,31,10,139/-. The Assessment Officer subsequently issued notice dated 20.7.2001 under Section 55 of the TNGST Act to levy additional sales tax on the entire taxable turnover of Rs.134,31,10,139/-. Objection was filed by the petitioner stating that the provision regarding levy of additional sales tax had been amended with effect from 1.8.1996 and since the turnover after 1.8.1996 was less than Rs.100 crores, it was not liable to pay any additional sales tax on the taxable turnover of Rs.92,54,84,967/- representing the transactions between 1.8.1996 to 31.3.1997. The Assessing Officer, however, found that the taxable turnover for the entire assessment year 1996-97 had exceeded Rs.100 crores and as such the assessee was liable to pay additional sales tax on the entire taxable turnover for the year. Aggrieved by the aforesaid order, the petitioner filed O.P.No.584 of 2001 before the Tamil Nadu Taxation Special Tribunal. The Tribunal confirmed the order of the Assessing Officer. Hence, the present writ petition.

6. The main contention is to the effect that since Section 2(1)(a) of the Tamil Nadu Additional Sales Tax Act had been found to be ultra vires and the liability to pay additional sales tax under Section 2(1)(aa), as introduced by the Amending Act 31 of 1996 as "read down" by the Special Tribunal, arose only if the taxable turnover exceeded Rs.100 crores and since the taxable turnover between the period 1.8.1996 and 31.3.1997 did not exceed Rs.100 crores, the order of the assessing officer asking the petitioner to pay additional sales tax was unjustified. In this context, it was submitted by the learned senior counsel appearing for the petitioner that the Special Tribunal in 110 STC 313 (SIEMENS LIMITED v. STATE OF TAMIL NADU) having struck down "clause (a) of sub-section (1) of Section 2 of the Principal Act, namely Act 14 of 1970", it must be taken that there was no liability to pay any additional sales tax under the principal Act. The amended provision, as contained in Section 2(1)(aa), which came into force with effect from 1.8.1996 and which as per the aforesaid decision was toned down and was made applicable equally to all, envisaged a taxable turnover of more than Rs.100 crores in order to attract liability to pay additional sales tax. Since such provision has become effective from 1.8.1996 and the taxable turnover of the petitioner between the period 1.8.1996 to 31.3.1997 was less than Rs.100 crores, there

was no question of paying any additional sales tax during the aforesaid period.

7. It is true that in the decision in question, namely 110 STC 313, the Tribunal had observed :

□ To give effect to the said intention we proceed to hold that clause (a) of sub-section (1) of section 2 of the principal Act, namely, Act 14 of 1970 is ultra vires and should stand deleted. We make it clear that we are striking down only clause (a) of section 2(1).□

The aforesaid observation of the Tribunal considered in isolation, supports the contention of the petitioner to the effect that there was no provision attracting liability to pay additional sales tax before 1.8.1996. However, as rightly observed by the Special Tribunal under the impugned order, the said observation made in 110 STC 313 has to be understood in the context in which such observation has been made. It is quite well settled that the effect of a judgment has to be examined in its totality and in the context in which it was made and not by referring to a stray sentence here or there, torn totally out of the context in which such observation has been made. It has to be remembered that before the Act was amended by Act 31 of 1996, the liability to pay additional sales tax in a graded scale had been clearly laid down under Section 2(1)(a) of the Tamil Nadu Additional Sales Tax Act, 1970. Only after tinkering had been made by the Legislature by amending Section 2(1)(a), making it applicable to the dealers other than the dealers registered in Tamil Nadu and by introducing a new provision in the shape of Section 2(1)(aa), raising exemption limit regarding the liability to pay additional sales tax so far as the registered dealers in Tamil Nadu are concerned to more than Rs.100 crores, the provision was found offensive. In other words, Section 2(1)(a), as it originally stood, was not found offensive, but Section 2(1)(a) as amended by the Act 31 of 1996 was struck down and the new provision as contained in Section 2(1)(aa) with required modifications was held to be applicable to all concerned. Even though the learned counsel appearing for the petitioner is correct in his submission to the effect that striking down of Section 2(1)(a) did not have the effect of reviving Section 2(1)(a) as it originally stood, the fact remains that so long as that provision, namely Section 2(1)(a) of the unamended Act, was in statute book, the liability to pay tax as per such provision was already incurred. In other words, the liability as envisaged under Section 2(1)(a) as per the original Act was in existence for the period from 1.4.1996 till 31.7.1996. At that stage the liability was incurred as soon as the turnover exceeded Rs.10 lakhs and as per the original provision, the extent of such liability varied upon the taxable turnover as per the original provision. With effect from 1.8.1996, the exemption limit was raised to Rs.100 crores and by virtue of the decision of the Tribunal, such exemption was equally applicable to all concerned. In view of the above, the contention of the learned counsel for the petitioner that there was no liability during the period 1.4.1996 to 31.7.1996 is not acceptable.

8. Even assuming that there was no liability to pay and there was no provision regarding payment of additional sales tax between 1.4.1996 and 31.7.1996, 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 1.8.1996 to 31.3.1997 did not exceed Rs.100 crores. Even assuming that the liability to pay additional sales tax arose only with effect from 1.8.1996, 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 1.4.1996 and 31.3.1997 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).

9. In either view of the matter, the contention raised is unacceptable.

10. Learned senior counsel has contended that under the impugned proceedings reference has been made to Section 55 of the TNGST Act for the purpose of effecting rectification, but jurisdiction under section 55 is not available to be exercised as the matter relates to Tamil Nadu Additional Sales Tax Act, 1970. This submission overlooks the basic concept that the levy of additional sales tax under section 2(1)(aa) of the Tamil Nadu Additional Sales Tax Act, 1970 is actually collection of sales tax at a higher rate from the dealers having turnover over a particular limit. This position is now clear in view of the Supreme Court decision reported in 34 STC 73 (S. KODAR v. STATE OF TAMIL NADU). Moreover, Section 2(1)(b) specifically lays down that the provisions of the TNGST Act shall apply in relation to the additional tax payable under Section 2(1)(aa) as they apply in relation to the tax payable under the TNGST Act. Apart from the above, Section 4 of the Additional Sales Tax Act contains the rule making power by the Government to carry out the purposes of the Act. Even though certain rules have been framed relating to some aspects of the assessment to be made and no specific rule is available for the purpose of effecting rectification, Rule 9 of the Tamil Nadu Additional Sales Tax Rules, 1970 provides that the provisions of the Tamil Nadu General Sales Tax Rules, 1959 shall apply mutatis mutandis to the additional tax leviable under section 2 of the Act.

11. A combined reading of these provisions make it amply clear that the provision under Section 55 of the TNGST Act and the relevant rules would be applicable for the purpose of effecting rectification. The Tamil Nadu Additional Sales Tax Act, 1970 is not a self contained code. It merely supplements Tamil Nadu General Sales Tax Act. It is necessary to read and construe the Tamil Nadu General Sales Tax Act and the Tamil Nadu Additional Sales Tax Act together. The observation made by the Supreme Court in 53 STC 1 (ASHOK SERVICE CENTRE AND ANOTHER v. STATE OF ORISSA) in the context of Orissa Sales Tax Act and Orissa Additional Sales Tax Act is equally applicable in the present context. It has been held in 113 STC 496 (KIRLOSKAR BROTHERS LTD. v. STATE OF TAMIL NADU) that the provisions under Section 55 of the TNGST Act can also be availed for the purpose of rectification of assessment under the Central Sales Tax Act and the ratio of the said decision would equally apply to the assessment of additional sales tax.

12. Even assuming that the provisions of Section 55 were not

attracted, there is no dispute that the provisions contained in Section 16 of the Tamil Nadu General Sales Tax Act, being a provision relating to assessment of escaped turnover, could have been applied. Law is well settled that when power is available to do a particular thing, exercise of such power would not be vitiated merely because reference has been made to a wrong source.

13. For the aforesaid reasons, we do not find any merit in the present writ petition, which is accordingly dismissed. No costs.

Index : Yes

Internet : Yes

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To

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