(2006) 11 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No. 7329 of 2001

Chennai Essential Oil and Aromatics APPELLANT

Vs

The District Forest Officer, Salem Division and The Commercial Tax Officer RESPONDENT

Date of Decision : 15-11-2006

Acts Referred:

Income Tax Act, 1961 — Section 206C(1)
Tamil Nadu General Sales Tax Act, 1959 — Section 2, 3, 3(1), 3(2A), 3(2C)
Tamil Nadu General Sales Tax Rules, 1959 — Rule 22(1), 22(2), 22(3), 22(4)

Citation : (2006) 11 MAD CK 0004

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : R. Kannan, for the Appellant; Titus Jesudoss, Additional Government Pleader, for the Respondent

Judgement

K. Raviraja Pandian, J.—The petitioner has filed the writ petition for the issue of writ of mandamus directing the first respondent to order

delivery of the sandalwood purchased by the petitioner in the auction sale held by the first respondent on 27.02.2001 in respect of 9.000 meters,

as confirmed by the first respondent vide proceedings in C. No. 2244/2001 ''dated 17.03.2001 by accepting 3% as sales tax on production of

Form XVII.

2. The case of the petitioner is that the petitioner is a small scale industry dealing with extraction of essential oil, registered with the Government of

Tamil Nadu, Directorate of Industries and has been allotted with the provisional registration No. 182904048 dated 25.11.1998 and this certificate

is valid upto 24.11.2003. The petitioner is also registered under the Tamil Nadu General Sales Tax Act, 1959 with the office of the Commercial

Tax Officer and a certificate of registration is also issued by the Commercial Tax Officer in TNGST No. 1362437 in area code No. 069. The

petitioner is also registered under the Central Sales Tax Act and a certificate has been issued by the competent authority in C.S.T. No. 765678 in

Area Code No. 069. The petitioner, during the course of business, had participated in the auction sale conducted by the first respondent on

27.02.2001 at Salem and was the successful bidder for 9.000 m. tonnes for a sale price of Rs. 66,15,700/-. The first respondent in C. No.

2244/2001 ''dated 17.03.2001 confirmed the sale in favour of the petitioner. The petitioner paid a sum of Rs. 13,23,140/- as the first instalment.

The petitioner is exempted from payment of income tax as the purchased materials were to be used only for the purpose of processing and not for

trading and to that effect a certificate was issued, whereby the first respondent was directed not to collect tax at source u/s 206C(1) of the Income

Tax Act, 1961.

3. It is the grievance of the petitioner that the respondents are demanding tax at 12% and refused to accept the payment of sales tax at 3% as per

Section 3(3) of the Tamil Nadu General Sales Tax Act on production of Form XVII and insisted the petitioner to pay tax at 12%, as the tax

payable in accordance with law. The issue is whether the petitioner is liable to pay 3% u/s 3(3) of the Act on production of Form XVII or 12%?

4. I heard the learned Counsel on either side and perused the materials available on record.

5. The second respondent is admittedly a dealer under Explanation (2) to Section 2(g) of the Tamil Nadu General Sales Tax Act, which explains

that the Central Government or any State Government which, whether or not in the course of business, buy, sell, supply or distribute goods,

directly or otherwise, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, shall be deemed to be

dealer for the purposes of the Act.

6. Section 3 of the Tamil Nadu General Sales Tax is the charging Section, which provides for levy of tax on sales or purchases of goods. The

Section, as obtained in the year 2000, provided that ""every dealer other than the dealer, casual trader or agent of a non-resident dealer, whose

total turnover for a year exceeds three lakhs of rupees, and every casual trader or agent of a non-resident dealer, whatever be his turnover for the

year, shall pay tax for each year in accordance with the provisions of the T.N.G.S.T. Act. Section 3(3) of the Act further provides that

notwithstanding anything contained in Sub-section (2), (2-A) or (2-C), but subject to the provisions of Sub-section (1), the tax payable by a dealer

in respect of sale of any goods including consumables, packing material and labels, but excluding plant and machinery, to another dealer for use by

the dealer in the manufacture, and assembling, packing or labelling in connection with such manufacture inside the State, for sale by him of any

goods other than ethyl alcohol, absolute alcohol, methyl alcohol, rectified spirit, neutral spirit and denatured spirit goods falling under Part A of the

Third Schedule, goods falling under item 1 of the Sixth Schedule and arrack, shall be at the rate of only three per cent on the turnover relating to

such sale.

7. As per Section 3(3), the tax payable by a dealer in respect of sale of goods shall be at the rate of only three percent on the turnover relating to

such sale. The dealer however is entitled to such concessional rate only on furnishing a declaration duly filled in and signed by the dealer to whom

the goods are sold containing the prescribed particulars in the prescribed form obtained from the prescribed authority. Clause (b) further provides

that if the dealer, who after purchasing the goods in respect of which he had furnished any declaration, fails to make use of the goods so purchased

for the purpose specified in the declaration but disposes of such goods in any other manner, shall pay the difference of tax payable on the turnover

relating to sale of such goods at the rate prescribed.

8. As per Rule 22(1) of the Tamil Nadu General Sales Tax Rules, the declaration form referred to in Clause (b) of the first proviso to Sub-section

(3) and in the first proviso to Sub-section (5) of Section 3 shall be furnished in Form XVII. Rule 22(2) provides that a dealer who wishes to

purchase goods from another dealer on payment of tax at the rate specified in Sub-section (3) or Sub-section (5) of Section 3, shall obtain from

the assessing authority a blank declaration form prescribed under Sub-rule (1) and shall furnish to the selling dealer the original and duplicate

portions of the declaration in Form XVII duly filled in and signed by him or by any responsible person authorised by him in this behalf and shall retain the counterfoil. Rule 22(3) provides that no purchasing dealer shall give a declaration except in a form obtained by him on application from

the assessing authority and not declared obsolete and invalid under this rule. Further Rule 22(4) provides that no selling dealer shall accept any

declaration except in a form obtained by the purchasing dealer on application from the assessing authority as aforesaid and not declared obsolete

or invalid.

9. In the light of the above said statutory provisions, the petitioner being a dealer under the Sales Tax Act and furnishes the declaration in form

XVII declaring that the goods are purchased only as raw material for the purpose of manufacturing sandal wood oil inside the State for sale, the

rate of tax is only 3 percent and the respondents are liable to accept the said rate of tax along with the declaration and deliver the goods. If any

excess payment is received that has to be refunded.

10. With this observation, the writ petition is disposed of. No costs.