(2006) 11 MAD CK 0012

In the Madras High Court

Case No : Writ Petition No. 7071 of 2000 and W.P.M.P. No. 10497 of 2000

Chennai Essential Oils and Aromatics APPELLANT

Vs

The Principal Chief Conservator of Forests and The District Forest Officer, Sathyamangalam Division RESPONDENT

Date of Decision : 07-11-2006

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 2, 3(1), 3(2), 3(3), 3(5)
Tamil Nadu General Sales Tax Rules, 1959 — Rule 22(1), 22(2), 22(3), 22(4)

Citation : (2006) 11 MAD CK 0012

Hon'ble Judges : K. Raviraja Pandian, J

Bench : Single Bench

Advocate : K.S. Natarjan, for the Appellant; Titus Jesudoss, Spl.G.P., for the Respondent

Judgement

K. Raviraja Pandian, J.—The writ petition is filed seeking for the relief of certiorarified mandamus calling for the records of the second

respondent - the District Forest Officer, Sathyamangalam Division dated 12.4.2000 in Ref. No. L/3968/99 and quash the same and consequently

forbear the respondents from in any way demanding any payment as claimed therein.

2. By the order dated 12.4.2000, the District Forest Officer rejected the request of the petitioner to release the goods i.e., sandal wood chips

purchased by the petitioner in the auction conducted by the respondent on payment of sales tax at the rate of 3 percent instead of eight percent u/s

3(3) of the Tamil Nadu General Sales Tax Act on the ground that the clarification issued by the Commissioner regarding payment of sales tax at

the concessional rate was in respect of sandal wood oil only as the petitioner purchased sandal wood chips and at the same time as no orders have been issued by the Commercial Tax Department regarding sandal wood, the petitioner has to pay only eight percent of sales tax as intra-state

sales. The correctness of the said order is now canvassed before this Court.

3. Though in the writ petition, a very elaborate affidavit has been filed with regard to the auction, subsequent event of demand of sales tax,

detention of goods, forfeiture of amount paid and subsequent order of the Government cancelling the forfeiture order, the point agitated before the

Court is that the petitioner purchased sandal wood chips in the auction conducted by the second respondent, he wanted to clear the goods u/s 3(3)

of the Tamil Nadu General Sales Tax Act by making payment of three percent tax as envisaged in the Act, but the respondents are demanding

eight percent tax on the sale value of the goods.

4. It is submitted by Mr. Natarajan, learned Counsel appearing for the petitioner that the petitioner is a registered forest contractor in

Sathyamangalam Division and participated in the auction held on 30.4.1999 and become the successful bidder in respect of ten metric tonnes of

sandal wood for a total bid amount of Rs. 43,63,100/- and paid the entire sale consideration with which there is no dispute. The only dispute is

that the petitioner being a registered dealer under the sales Tax Act, he is entitled to clear the goods u/s 3(3) of the Tamil Nadu General Sales Tax

Act at the concessional rate of tax on production of necessary form as provided in the said provision. However, the respondents without any

rhyme or reason compelled the petitioner to pay tax at the rate of eight percent, which is against the statutory provision. As the petitioner needed

the goods purchased, he paid the tax as demanded by the respondents, without prejudice to his contentions in this writ petition and cleared the

goods. The collection of tax over and above the statutory provision has to be refunded to the petitioner.

5. The second respondent filed counter, wherein the material objection on the part of the respondents is that the contention of the petitioner that

they are liable to pay only three percent of tax is untenable as the petitioner has purchased the goods in the auction only after accepting the sale

condition whereby the petitioner had accepted to pay the sales tax at the rate in force at the time of confirmation of sale. The petitioner having

accepted to pay the sales tax at the rate in force, he is bound to make the payment as demanded and it is not now open to them to seek the

concession belatedly .

6. It is the consensus of the parties that the issue involved in the writ petition is restricted only to the question as to whether the petitioner is entitled

to clear the goods on payment of concessional rate of duty as prescribed u/s 3(3) of the Tamil Nadu General Sales Tax Act or at the higher rate

treating the sale as a sale by simplicator

7. I heard the argument of the learned Counsel on either side and perused the material on record.

8. It is contended across the bar by Mr. Natarajan, learned Counsel appearing for the petitioner that the petitioner is not only a registered forest

contractor, but also a registered dealer under the Tamil Nadu General Sales Tax Act and Central Sales Tax Act, though no such averment has

been contained in the affidavit filed in support of the writ petition.

9. Before dealing with the legal position, let me make the factual position clear.

10. 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.

11. According to the petitioner and as contended by Mr. Natarajan, learned Counsel appearing for the petitioner, the petitioner is also a registered

dealer under the Act. It is further contended that the petitioner is having a factory at Sidco Industrial Estate, Ambattur, where the petitioner is

manufacturing sandal wood oil out of the sandal wood purchased locally and the goods purchased in the subject auction is also purchased for the

purpose of manufacturing sandal wood oil in their factory at Ambattur.

12. 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 a 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), 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.

13. 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.

14. 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.

15. In the Form XVII declaration, the purchasing dealer has to certify to the effect that the goods specified and supplied by the selling dealer are

for the use by the purchasing dealer as consumables/packing materials/labels/ component parts/raw materials/ processing materials of other goods,

which the purchasing dealer would manufacture inside he State for sale.

16. Thus, as per the above said statutory provision, if the purchasing dealer furnishes the form XVII duly obtained as stated above under the

relevant provisions of the Act and produce before the selling dealer, he is liable to pay only three percent of the tax, which is the statutory

requirement. This is the rate of tax that is in force at the time of confirmation of sale. 8 percent of tax as claimed by the respondents is the rate of

tax of sales simplicitor, which is not coming with the purview of Section 3(3) of the Sales Tax Act.

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

XVII as prescribed 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.

With this observation, the writ petition is disposed of. No costs. Consequently, W.P.M.P. No. 10497 of 2000 is closed.