

(2010) 07 MAD CK 0331

In the Madras High Court

Case No : Tax Case (Revision) No. 743 of 2006

K.K. Dhanushkodi Nadar

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 08-07-2010

Acts Referred:

Tamil Nadu Additional Sales Tax Act, 1970 — Section 2, 2(1), 2(2), 2(3)
Tamil Nadu General Sales Tax Act, 1959 — Section 2

Citation : (2011) 43 VST 183

Hon'ble Judges : M.M. Sundresh, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : K. Mani, for the Appellant; Haja Naziruddin, Special Government Pleader (T), for the Respondent

Judgement

F.M. Ibrahim Kalifulla

1. The assessee is the revision petitioner. The challenge is to the order of the Sales Tax Appellate Tribunal in S. T. A. No. 64 of 2001. The assessment year is 1996-97.

2. The vital question required to be considered in this revision is, as to how to apply section 2(1)(a) of the Tamil Nadu Addidonal Sales Tax Act, 1970, which existed prior to Act 31 of 1996, since by Act 31 of 1996, the previous section 2(1) (a) came to be amended and after the amendment, section 2(1)(a) and 2(1)(aa) came to be introduced. Further, Act 31 of 1996 was the subject-matter of challenge before the Tamil Nadu Taxation Special Tribunal, in which the Tribunal rendered a judgment in Siemens Ltd. v. State of Tamil Nadu reported in (1998) 110 STC 313 (TNTST). The Tribunal struck down the amended section 2(1)(a) and also deleted certain words in the newly inserted section 2(1)(a) of the Tamil Nadu Act 31 of 1996. In the light of the above pre-amended section 2(1) (a) and the amended sections 2(1)(a) and 2(1)(aa) as well as striking down of the provisions to the extent referred to in the above judgment of the Special Tribunal, the question to be considered is as to in what manner the additional

sales tax liability of the petitioner-assessee is to be determined.

3. In order to appreciate the contentions raised, it is better to note the unamended provision as well as the amended provisions and the provision as it stands after the judgment of the Special Tribunal.

4. Section 2(1) (a) as it originally stood reads as under :

2. Levy of additional tax in the case of certain dealers.--(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 exceeds ten lakhs of rupees 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

1.5 per cent of taxable turnover

(ii)

Where the taxable turnover exceeds one crore of rupees but does not exceed five crores of rupees

2 per cent of the taxable turnover

(iii)

Where the taxable turnover exceeds five crores of rupees but does not exceed ten crores of rupees

2.25 per cent of the taxable turnover

(iv)

Where the taxable turnover exceeds ten crores of rupees but does not exceed three hundred crores of rupees

2.5 per cent of the taxable turnover

(v)

Where the taxable turnover exceeds three hundred crores of rupees

3 per cent of the taxable turnover

Provided that where in respect of declared goods as defined in clause (h) of section 2 of the said Act, the tax payable by such dealer under the said Act, together with the additional tax payable under this sub-section, exceeds four per

cent of the sale or purchase price thereof, the rate of additional tax in respect of such goods shall be reduced to such an extent that the tax and the additional tax together shall not exceed four per cent of the sale or purchase price of such goods.

5. The amended sections 2(1) (a) and 2(1) (aa) were as under :

Amendment of section 2.--In section 2 of the Tamil Nadu Additional Sales Tax Act, 1970 (hereinafter referred to as the principal Act), in sub-section (1),--

(i) In clause (a), for the word "dealer" the words "casual trader or agent of a non-resident dealer or a local branch of a firm or company situate outside the State" shall be substituted;

(ii) after clause (a) and before the proviso thereto, the following shall be inserted, namely :--

(aa) the tax payable under the said Act, shall in the case of a dealer including the principal selling or buying goods in this State through agents other than a casual trader or agent of a non-resident dealer or a local branch of a firm or company situated outside the State 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 exceeds one hundred crores of rupees but does not exceed three hundred crores of rupees

2.5 per cent of the taxable turnover

(ii)

Where the taxable turnover exceeds three hundred crores of rupees

3 per cent of the taxable turnover

Explanation,--"Taxable turnover" for the purpose of this clause in respect of a principal selling or buying goods in this State 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.

6. In Siemens case [1998] 110 STC 313, the Special Tribunal passed the following order (pages 329 and 330 of 110 STC) :

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 virus 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 u/s 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 up to rupees one hundred crores will be equally applicable to all dealers. The O. Ps. are allowed and ordered in the above terms. There will be no order as to costs.

7. After the Siemens case [1998] 110 STC 313 (TNTST), the amended section 2(1)(aa) reads as under :

The tax payable under 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 :

Rate of tax

(i)

Where the taxable turnover exceeds one hundred crores of rupees but does not exceed three hundred crores of rupees

2.5 per cent of the taxable turnover

(ii)

Where the taxable turnover exceeds three hundred crores of rupees

3 per cent of the taxable turnover

Explanation.--"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.

8. With the statutory provisions prevailing as above during the assessment year 1996-97, the order of the assessing authority as well as that of the Appellate Tribunal has to be examined.

9. The submission of the learned counsel appearing for the petitioner-assessee is that since as per the Act, the expression "year" refers to the whole of the financial year, when once section 2(1)(a) came to be amended, the liability could be fastened only on a dealer, whose turnover exceeded one hundred crores of rupees and it is the case of the assessee that in the said financial year namely, the period up to March 31, 1997, as the turnover of the assessee did not exceed

rupees one hundred crores, there would be no liability of additional sales tax on the assessee. He further contended that assuming that the liability could be bifurcated for the period up to July 31, 1996 and for the period subsequent to August 1, 1996, the order of the assessing authority not having applied the unamended provision namely, section 2(1) (a) as it originally stood, by not deducting the first ten lakhs of rupees in the taxable turnover, to that extent, the order of the assessing authority was liable to be interfered with.

10. As against the above submission, the learned Special Government Pleader would contend that since section 2(1)(a) as it originally stood prior to amendment, was very much in force up to July 31, 1996, as the said provision came to be amended by introducing sections 2(1) (a) and 2(1) (aa) on and from August 1, 1996, the liability of the petitioner-assessee for payment of additional sales tax has to be worked out based on the provisions, both unamended up to July 31, 1996 and as amended based on the Siemens case [1998] 110 STC 313 (TNTST) on and after August 1, 1996 which were in force during the relevant period. The further contention of the learned Special Government Pleader is that the definition of the expression "year" in the Tamil Nadu General Sales Tax Act, though means the "financial year", the same will not in any way affect the authority of the assessing officer to determine the tax liability as per the prevailing rate, which was applicable in that year up to July 31, 1996 and for the period subsequent to August 1, 1996.

11. Though the learned counsel admitted the contention that the notification came to be issued by which the amended section 2(1) (a) was given effect to only from June 21, 1999 and therefore by virtue of the said notification, the applicability of section 2(1) (a) prior to its amendment and section 2(1) (a) after its amendment has to be re-examined, we are of the view that such a question does not arise for consideration here, inasmuch as, we are concerned with the assessment year 1996-97 and with reference to the said assessment year, it was never in dispute that the amended sections 2(1)(a) and 2(1)(aa) were effective from August 1, 1996. Therefore at the outset, we are not persuaded to consider the said submission of the learned counsel for the petitioner.

12. In the abovestated background, when we consider the respective submissions of the learned counsel for the petitioner as well as the respondent, we find that the definition of the expression "year" u/s 2(1)(t) of the Tamil Nadu General Sales Tax Act will have no implication, while applying the un-amended section 2(1) (a) up to July 31, 1996 and the amended section 2(1) (a) and 2(1) (aa) after August 1, 1996.

13. The definition of the expression "year" which means the financial year, is only for the limited purpose of ascertaining what is the financial year with reference to which the tax liability under the main Act as well as the additional sales tax under the Tamil Nadu Sales Tax Act is to be worked out. The mere fact that u/s 2(1) (a), a reference is made to a "year", the same will not in any way create any different impact, while applying the liability or the rate of tax to be worked

out during the financial year. In other words, if in the very same financial year, different rates are to be worked out by virtue of prescription of such different rates, due to statutory amendments, the only exercise to be carried out would be to ascertain the period for which the different rates of tax are to be worked out. In our considered view, such prescription of different rates in that financial year will not in any way affect the very basis of the liability created. Once we steer clear of the said position, we do not find hurdle at all in bifurcating the financial year in the case of any assessee, while applying the un-amended section 2(1) (a) up to July 31, 1996 and the liability after its amendment on and after August 1, 1996, for the purpose of calculating the additional sales tax liability.

14. In the case on hand, having regard to the decision of the Special Tribunal in Siemens case [1998] 110 STC 313 (TNTST), the additional sales tax liability up to July 31, 1996 is to be worked out based on the unamended section 2(1)(a), which was prevailing up to that date. As per the provision as it stood as on July 31, 1996, in the case of a dealer whose taxable turnover in that financial year up to July 31, 1996 exceeded ten lakhs of rupees, up to one crore of rupees, his tax liability has to be increased by an additional sales tax at the rate of 1.5 per cent; where the taxable turnover exceeded one crore of rupees up to five crores of rupees, it is two per cent; where it exceeded five crores of rupees up to ten crores of rupees, at the rate of 2.25 per cent; where it exceeded ten crores up to 300 crores of rupees at the rate of 2.5 per cent and where it exceeded 300 crores of rupees at the rate of three per cent. However, no additional tax could be levied for the first ten lakhs of rupees.

15. Having regard to the impact made in the amended provision, as per the judgment of the Special Tribunal in Siemens case [1998] 110 STC 313 (TNTST) on and after August 1, 1996, the payment of additional sales tax would arise only if the taxable turnover for the whole of the financial year exceeded one hundred crores of rupees and even in such a situation, while for the period up to July 31, 1996, the liability will have to be worked out as per the provision which was prevailing up to that date, namely, the unamended section 2(1) (a) and that for the period subsequent to August 1, 1996 up to March 31, 1997 for the taxable turnover generated on and after August 1, 1996 alone, the applicable rate of tax will have to be calculated.

16. To make the position more clear, for instance, in the financial year April 1, 1996 to March 31, 1997, for the period up to July 31, 1996, if the taxable turnover was Rs. 50 lakhs, for the first ten lakhs of rupees, there would be no additional tax liability, for the rest forty lakhs of rupees, the liability by way of additional tax should be calculated at the rate of 1.5 per cent and if for the whole of the financial year, the taxable turnover exceeded Rs. 100 crores, for the remaining amount of Rs. 99.50 lakhs, i.e., excluding Rs. 50 lakhs, which is relatable to the period only up to July 31, 1996, the rate of tax as per the amended section 2(1) (aa) will have to be worked out.

17. Keeping the above statutory implication relating to payment of additional

sales tax as was applicable up to July 31, 1996 and after August 1, 1996, when we examine the order of the assessing authority dated March 9, 1999, in the case on hand, we find that the taxable turnover of the assessee was Rs. 31,94,415 up to July 31, 1996. The taxable turnover for the financial year is stated to have exceeded rupees one crore. But for the purpose of calculation of additional sales tax, since for the whole of the financial year, the taxable turnover did not exceed one hundred crores, there would be no necessity to make any further calculation for the period beyond July 31, 1996. The assessing authority calculated the additional sales tax at the rate of two per cent on the taxable turnover for the whole of the year.

18. The learned Special Government Pleader fairly pointed out that since the unamended provision was very much in force up to July 31, 1996, the calculation of additional sales tax would have to be made by the assessing authority for the taxable turnover which was prevailing only up to the period July 31, 1996 and for the period subsequent to August 1, 1996, the liability would have been assessed, if at all the taxable turnover up to the end of the financial year exceeded one hundred crores of rupees and not otherwise. Consequently, the rate of tax applied, viz., two per cent was not in consonance with the statutory provision as was prevailing as on July 31, 1996. Since the taxable turnover did not cross Rs. 100 crores during the said financial year, in the case of the assessee, the liability of additional sales tax will have to be calculated only for the period up to July 31, 1996 and not beyond and that too, on the taxable turnover that was available up to that date, viz., July 31, 1996.

19. Having regard to the said position, the impugned order of the Tribunal as well as that of the assessing authority are liable to be set aside. While setting aside the order of the assessing authority, we direct the assessing authority to pass fresh orders by keeping the taxable turnover of the assessee up to July 31, 1996 in a sum of Rs. 31,94,415 and calculate the tax at the rate of 1.5 per cent on the sum of Rs. 21,94,415, (i.e.), after deducting the first ten lakhs as provided under the proviso to sub-clause (i) of section 2(1)(a).

20. The learned counsel for the petitioner states that a Samadhan Scheme has been announced and prevalent as on date and the same will be in force up to August 15, 2010. The assessing authority, is therefore, directed to ensure that revised orders of assessment as directed in this order is passed before August 10, 2010.

21. The tax case (revision) is disposed of accordingly. No costs.