(2009) 01 MAD CK 0011

In the Madras High Court

Case No : Writ Petition No. 1146 of 2009 and M.P. No''s. 1 and 2 of 2009

Ocean Interiors Limited APPELLANT

Vs

Assistant Commissioner (Commercial Taxes) RESPONDENT

Date of Decision : 29-01-2009

Acts Referred:
Companies Act, 1956 — Section 23(1), 43A

Citation : (2010) 28 VST 300

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : P. Rajkumar, for the Appellant; A.C. Mani Bharathi, Government Advocate, for the Respondent

Judgement

V. Ramasubramanian, J.—The petitioner has come up with a challenge to an order passed by the Assistant Commissioner (Commercial

Taxes), rejecting the request of the petitioner to amend the certificate of registration.

2. Heard Mr. Rajkumar, learned Counsel for the petitioner and Mr. A. C. Mani Bharathi, Government Advocate, for the respondent.

3. The petitioner was originally incorporated as a private limited company under the Companies Act, 1956, with the name ""Ocean Interiors Private

Limited"". At the time of incorporation as a private limited company in January 2004, the company was registered under the Tamil Nadu General

Sales Tax Act, 1959 and the Central Sales Tax Act, 1956. After the introduction of the Tamil Nadu Value Added Tax Act, 2006 with effect from

January 1, 2007, the private limited company was granted a registration number TIN-3316423042. The CST registration number was retained as

such.

4. On April 1, 2008, the general body of the private limited company passed an extraordinary general body resolution for converting the private

limited company into a public limited company. Suitable amendments to articles of association were also made and the Registrar of Companies

issued a fresh certificate of registration on May 1, 2008 in terms of Section 23(1) of the Companies Act. But the corporate identity number of the

company remained the same.

5. After the conversion of the private limited company into a public limited company, the petitioner made a request to the respondent by a letter

dated June 23, 2008, to amend the certificate of registration. But the respondent issued a notice dated July 21, 2008, contending that the

registration certificate issued to one company will not be valid for another and therefore, a fresh TIN had to be obtained whenever there is a

change in the constitution.

6. Therefore, the petitioner was left with no alternative except to seek a fresh certificate and a fresh certificate was issued on September 4, 2008.

A new TIN and CST registration number have also been issued but the question as to what would happen for the interregnum period has cropped

up and the respondent has issued an order impugned in the writ petition, stating that the earlier TIN and CST registration number in favour of the

private limited company would stand cancelled with effect from April 1, 2008. Since this has left the petitioner in a piquant situation, where there

will be no registration from April 1, 2008 to September 4, 2008, the petitioner has come up with the present writ petition.

7. I fail to appreciate as to how at the outset a fresh certificate of registration could be demanded by the respondent when a private limited

company becomes a public limited company. The legal entity remains the same even after the change. There are situations contemplated in the

Companies Act itself when a private limited company may also become a deemed public limited company in terms of Section 43A. Therefore,

when the legal entity remains the same, with only a change in constitution, the distinction sought to be made by the respondent as though a change

of constitution is different from a change in constitution, is not borne out by any legal principles. After all the Companies Act recognises such a

conversion from a private limited company to a public limited company. The provisions of the TNVAT Act, 2006 do not override the provisions of

the Companies Act, insofar as the provisions relating to the change of name, change of registered office and amendment of articles of association

are concerned. Therefore, the respondent was in error in directing the petitioner in the first instance to obtain a new certificate of registration.

However, the petitioner has obtained a new certificate of registration. Therefore, I do not wish to again upset the apple cart. But the petitioner

cannot be left without a registration from the period from April 1, 2008 up to September 4, 2008 as it would result in disastrous consequences.

8. Therefore, the writ petition is ordered setting aside the order of the respondent. The respondent is directed to treat the old TIN and CST

number as having continued up to September 3, 2008 so that the new TIN and CST number which came into effect from September 4, 2008

would continue without any interruption, so far as the assessment of the petitioner-company to value added tax is concerned. The writ petition is

ordered accordingly. Consequently, connected miscellaneous petitions are closed. No costs.