(2012) 11 MAD CK 0167

In the Madras High Court

Case No : Writ Petition No. 568 of 2011

Surya Vinayaka Industries Limited — APPELLANT

Vs

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

Date of Decision : 21-11-2012

Acts Referred:

Central Sales Tax Act, 1956 — Section 3(a)
Tamil Nadu Value Added Tax Act, 2006 — Section 2(12), 2(15), 2(33), 3

Citation : (2013) 28 MLJ 407 : (2013) 58 VST 474 : (2013) WritLR 405

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : N.R.R. Arun Natarajan, for the Appellant; N. Inbanathan, Advocate (Forest) Government for 1st Respondent and Mr. A.R. Jaya Prathap, Advocate (Tax) Government for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice R. Sudhakar

1. In W.P. No. 568 of 2011, the petitioner seeks a writ of Certiorarified Mandamus to call for the records of the sale confirmation having reference IC No. 9999/2010 S(1), dated 30.12.2010 passed by the first respondent, to quash the same insofar as it directs payment of 12.5% sales tax on the sale value and to consequently direct the first respondent to collect sales tax at 2% at Rs. 89,24,920/- from the petitioner on the total sale value of Rs. 44,62,46,000/- for 99.000 MTS of sandalwood purchased by the petitioner in the auction conducted by the first respondent held on 22.12.2010 in the course of inter-State trade within the meaning of Section 3(a) of the Central Sales Tax Act and deliver the said quantity of 99.000 MT of sandalwood upon payment of the balance sale consideration and other charges if any. In W.P. No. 569 of 2011, the petitioner seeks a writ of Certiorarified Mandamus to call for the records of the sale confirmation having reference IC No. 9999/2010 S(1), dated 30.12.2010 passed

by the first respondent, to quash the same insofar as it directs payment of 12.5% sales tax on the sale value and to consequently direct the first respondent to collect sales tax at 2% at Rs. 7,05,580/- from the petitioner on the total sale value of Rs. 3,52,79,000/-for 7.000 MTS of sandalwood purchased by the petitioner in the auction conducted by the first respondent held on 22.12.2010 in the course of inter-State trade within the meaning of Section 3(a) of the Central Sales Tax Act and deliver the said quantity of 7.000 MT of sandalwood upon payment of the balance sale consideration and other charges if any.

2. In W.P. No. 570 of 2011, the petitioner seeks a writ of Certiorarified Mandamus to call for the records of the sale confirmation having reference IC No. 9999/2010 S(1), dated 30.12.2010 passed by the first respondent, to quash the same insofar as it directs payment of 12.5% sales tax on the sale value and to consequently direct the first respondent to collect sales tax at 2% at Rs. 2,01,440/- from the petitioner on the total sale value of Rs. 1,00,72,000/-for 2.000 MTS of sandalwood purchased by the petitioner in the auction conducted by the first respondent held on 22.12.2010 in the course of inter-State trade within the meaning of Section 3(a) of the Central Sales Tax Act and deliver the said quantity of 2.000 MT of sandalwood upon payment of the balance sale consideration and other charges if any.

3. While the petitioner in W.P. No. 568 of 2011 is engaged in the business of distillation of sandalwood oil and sandalwood allied, etc. in the State of Haryana, the petitioners in W.P. Nos. 569 and 570 of 2011 are carrying on business of export and sale of sandalwood oil and sandalwood chips, etc. in Delhi. All the petitioners are registered dealers under the Central Sales Tax Act. They participated in the auction conducted by the first respondent on 22.12.2010 for sale of sandalwood. The sale is by way of tender-cum-auction. The petitioners have been declared successful in the auction and each one of them purchased certain quantity of sandalwood from the first respondent as mentioned earlier. The first respondent by letters even dated 30.12.2010 informed the petitioners to pay sales tax at 12.5% on the sale value. Thus, the petitioner in W.P. No. 568 of 2011 was directed to pay Rs. 5,57,80,750; the petitioner in W.P. No. 569 of 2011 was directed to pay Rs. 44,09,875/-; and the petitioner in W.P. No. 570 of 2011 was directed to pay Rs. 12,59,000/-towards sales tax.

4. The said portion of the impugned letter demanding sales tax at the rate of 12.5% on the sale value is under challenge stating that it is not local sale, but it is an inter-State sale taxable under the provisions of the Central Sales Tax Act, 1956.

5. Before adverting to the said stand of the petitioners, it is relevant to refer to some of the provisions of the tender cum auction sale notification, which are as under:

Sealed Tenders are invited from the registered sandalwood contractors of Salem Division for the purchase of Sandalwood from the Government Sandalwood

Depot at Salem for different classes of Sandalwood (vide Annexure) by way of Tender cum auction sale to be conducted by the District Forest Officer, Salem. Sealed Tenders will be accepted in the office of the District Forest Office, Salem upto 11.00 A.M. on 22.12.2010 and the received tenders will be opened immediately thereafter before the tenderers who are present, by the District Forest Officer, Salem at Government sandalwood Depot, Ilasthampatty, Salem, Tamil Nadu. The auction sale will be held at 12.00 Noon on 22.12.2010 by the District Forest Officer, Salem at the same venue.

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21. The successful Tender cum auction sale bidder shall pay the following amount:

(a) The E.M.D. of Rs. 1,00,000/- (Rupees one lakh only) referred in Condition No. 8(a) above will not be included for the purpose of calculating the sum required to be deposited as per clause 8(b) above.

(b) Each successful tenderer/bidder shall pay the remaining 80% amount (i.e. the entire balance sale amount) by way of Demand Draft drawn on any Nationalized Bank in favour of the District Forest Officer, Salem Division, Salem within 45 days from the date of receipt of confirmation order or before taking delivery, whichever is earlier. Bank Guarantee will not be accepted in lieu of cash or Demand draft.

(c) No part payment of any installments will be accepted. Any tenderer/bidder fail to make the necessary remittance by the due date, the money already remitted shall lapse to Government. The District Forest Officer, Salem without any further reference to the tenderer/bidder may resell the wood in question at the risk of the tenderer/bidder, who shall be liable for any loss. The tenderer/ bidder shall not be eligible for any profit, which may arise on account of such resale.

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23. Delivery of wood:

(a) The material sold will be delivered to the successful Tenderer at the depot site after completion of all the payments and formalities mentioned in the Notification.

(b) The sold wood shall be taken delivery by the Tenderer within 15 days from the date of final payment of tendered amount and taxes. If the wood is not taken delivery within 15 days from the date of final payment, it will be deemed that the purchaser has taken delivery of the entire quantity of wood purchased on the 15th day and the wood is kept in bailment from that day with the District Forest Officer, Salem, as bailee. The bailor (purchaser) shall pay ground rent at the rate of Rs. 600/- per day per tonne. The bailee will not be responsible for any shortage or deterioration of quality of the wood. The maximum period of bailment is 90 days, after which the sold wood shall become the property of the Government.

(c) The purchaser should give atleast seven days notice of his intention to take delivery to the District Forest Officer, Salem supported by bank remittance in token for payment. No delivery will be made on holidays.

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26. Transport of wood to be done under proper permit: The Tenderer in whose name the sale is effected shall transport the material under the cover of a Transit permit to be issued by the competent authority of Forest Department to the destination approved by the concerned District Forest Officer in terms of Timber Transit and other relevant Rules in force.

27. Deemed acceptance of terms and conditions:

The fact of submitting a Tender is deemed to be unreserved acceptance of the terms and conditions of Tender cum auction sale.

28. Taxes to be paid: (a) VAT and other taxes:

(i) Value Added Tax (previously Sales Tax) @ 12.5% or at the rates in force on that date and other taxes if any, levied by the Government, shall be paid by the tenderer/ bidder as per provisions of the VAT Act, 2005 and Rules made there under and other concerned provisions of law, along with the payment of final installment of the balance tender sale amount.

(ii)The tenderer/bidder shall get orders from the Assistant Commissioner (Commercial Taxes) Salem Town North and pay the value added tax, as ordered by the Assistant Commissioner (Commercial Taxes), Salem Town North, Salem. The tenderer/bidder shall produce exemption certificate obtained from the Assistant Commissioner (Commercial Taxes) Salem Town North, Salem, if the tenderer/bidder claims any exemption of payment of taxes. In case of non-production of such exemption letter, Tenderer/bidder must pay full amount.

The tenderer/bidder shall resolve any dispute/ litigation with regard to VAT or any Tax, only with the Commercial Tax Department and the Forest Department will not be a party to it.

(b) income tax:

income tax shall be paid by the Purchaser, as per the provisions of the Income Tax Act 1961 and Rules made there under along with the balance 80% of the tender amount.

(i) The tenderer/bidder should mention the Permanent Account Number (PAN) issued by the income tax Department. If not allotted, they should specify whether he/she has applied for the PAN, and if so, a copy of the Acknowledgment given by the Income Tax Department should be enclosed." Apart from the above, all the tenderers/bidders have duly certified as under, as specifically contemplated in the tender cum auction sale notification:

CERTIFICATE

I/We certify that the above conditions have been read and understood by me/us and I/We abide by all conditions. Signature of the Tenderer/bidder Date: Place:

6. In the present case, consequent to the tender cum sale notice and the acceptance of terms by the intending buyers, the auction took place in the State of Tamil Nadu, confirmation of the auction was issued by the competent authority in the State of Tamil Nadu. The delivery was effected in the State of Tamil Nadu as per Clause 23 of the tender cum auction sale notification. The consideration consequent to the auction was also paid in the State of Tamil Nadu as per Clause 21 of the tender cum auction sale notification. Therefore, the entire sale transaction as per the records took place in the State of Tamil Nadu. In effect, the goods were sold and delivered within the State of Tamil Nadu. The terms of the tender cum auction sale notification covers all the registered sandalwood contractors of Salem Division. There is no differentiation as local buyer or inter-State buyer.

7. So far as tax is concerned, Clause 28(a) of the tender cum auction sale notification provides for payment of VAT and other taxes and Clause 28(b) of the tender cum auction sale notification provides for payment of income tax. The rate of Value Added Tax @ 12.5% is also specified in clause 28(a) of the tender cum auction sale notification. Clause 27 of the tender cum auction sale notification specifically provides for deemed acceptance of the terms and conditions of the tender cum auction sale notification. Moreover, the tenderer/ bidder certifies at the bottom of the tender application that they will abide by all the terms and conditions of the tender cum auction sale notification. In such view of the matter, if all the petitioners have accepted the terms and conditions of the tender cum auction sale notification unreservedly, they cannot take a plea that they will not be entitled to pay the Value Added Tax @ 12.5%, as contained in Clause 28(a) of the tender cum auction sale notification. In any event, on going through the various provisions contained in the tender cum auction sale notification, which the petitioners in each one of the case agreed to abide by unconditionally, it is clear that the entire transaction resulting in sale in this case has taken place in the State of Tamil Nadu.

8. The relevant portion of Section 3 of the Tamil Nadu Value Added Tax Act, 2006 (for brevity, "the TNVAT Act, 2006"), which provides for levy of taxes on sales of goods, reads as follows:

Section 3 Levy of taxes on sale of goods.-(1) (a) Every dealer, other than a casual trader or agent of a non-resident dealer, whose total turnover for a year is not less than rupees five lakhs and every casual trader or agent of a non-resident dealer, whatever be his total turnover, for a year, shall pay tax under this Act.

9. The term "dealer" defined u/s 2(15) of the TNVAT Act, 2006 means any person who carries on the business of buying, selling or distributing goods, directly or otherwise and it includes a casual trader. Section 2(12) of the TNVAT Act, 2006 defines "casual trader" as under: "Section 2(12) casual trader means a person who has, whether as principal, agent or in any other capacity, occasional transactions of a business nature involving the buying, selling, supply or distribution of goods in the State, whether for cash, or for deferred payment, or for commission, remuneration, or other valuable consideration, and who does not reside or has no fixed place of business within the State."

10. The term "sale" is defined u/s 2(33) of the TNVAT Act, 2006 as under:

Section 2(33) sale with all its grammatical variations and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of business for cash, deferred payment or other valuable consideration and includes -

(i) a transfer, otherwise than in pursuance of a contract of property in any goods for cash, deferred payment or other valuable consideration.

Therefore, the sale in the present case either to a dealer or to a casual trader or agent is liable to be taxed as there is no dispute of sale within the State of Tamil Nadu. The petitioners in all these cases have bound themselves by the terms and conditions contained in the tender cum auction sale notification and the provisions of the TNVAT Act, 2006, for payment of tax on sale of goods within the State of Tamil Nadu. Therefore, they cannot resile from their contract nor does the law provide for payment of lesser tax, as the sale in the present case attracts the provisions of the TNVAT Act, 2006 as set out above.

11. Merely because there is movement of goods from the State of Tamil Nadu to another State at the instance of the buyer, that would not take it out of the purview of the term sale within the State. There are certain rules which provide for transportation of goods in question after the sale. But that does not change the character of the sale within the State consequent to tender cum auction sale. The benefit which the petitioners may get out of the provisions of the Income Tax Act is totally alien to the payment of tax under the TNVAT Act, 2006, as the two enactments operated in different fields. There is no scope or provision for reading one Act into the other, unless there is an express provision. Since the sale in this case was effected within the State of Tamil Nadu on the basis of the tender cum auction sale and the petitioners in all these cases have agreed to abide by the terms and conditions unconditionally, there cannot be any manner of doubt that the case squarely falls within the mischief of Section 3 of the TNVAT Act, 2006. Therefore, the demand for payment of value added tax under the TNVAT Act, 2006 is justified. There is no basis to justify the claim as inter-State sale. The said plea is specious and not as per law. The petitioners have not made out a case for the relief sought for both in law and on facts.

12. A similar issue was decided by a Division Bench of this Court in Karnataka Soaps and Detergents Ltd. v. District Forest Officer, Sathyamangalam and others, (2005) 140 STC 112, wherein it was held as under:

11. It may be noted that the auction sale of sandalwood in the State of Tamil Nadu was done by the State of Tamil Nadu. The State Government would only be interested in getting the highest price for the sandalwood, and it would hardly be concerned with the question whether the sandalwood after the auction sale is consumed within the State of Tamil Nadu or goes to some other State. Hence, it cannot be said even by implication that the State of Tamil Nadu had entered into any covenant with the petitioner/appellant for transportation of the sandalwood to Karnataka after the sale. The movement of goods from Tamil Nadu to Karnataka can also not be said to be an incidence of the auction sale, rather the auction sale had nothing to do with the transport of the goods to Karnataka. In the auction sales (for all we know) there may have been bidders who wanted to purchase the sandalwood for use within the State of Tamil Nadu and not for transport outside the State. The State Government authorities would hardly be interested in the question whether the sandalwood after purchase in the auction sale is sent to Karnataka or U.P or some other State, or remains within Tamil Nadu. Hence, it cannot be said that the movement of goods to Karnataka was an incidence of the auction sale. In our opinion, such movement was wholly independent of the auction sale. Thus, it cannot be said that it was an inter-State sale.

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13. In the present case, there is no conceivable legal link between the auction sale in Tamil Nadu and the movement of goods to Karnataka. The said movement was purely voluntary at the option of the petitioner and not under any legal obligation. Hence, the decision in South India Viscose Ltd. Vs. State of Tamil Nadu, is clearly distinguishable.

The decision of the Division Bench, cited supra, fortifies the view now taken by this Court. For the reasons stated supra and in view of the decision of the Division Bench of this Court, the plea of the petitioners that it is an inter-State sale has no legal basis and hence, the said contention is rejected. The challenge to levy of Tamil Nadu value added tax therefore fails.

In the result, these writ petitions are dismissed. No costs. Consequently, M.P. No. 2 of 2011 (3 Petitions) and M.P. No. 3 of 2011 (3 Petitions) are closed.

