(2009) 01 MAD CK 0304

In the Madras High Court

Case No : Writ Petition No''s. 16154, 16155 and 16512 of 2008 and M.P. No''s. 1 and 2 of 2008

Technomed Electronics and Another APPELLANT

Vs

Commercial Tax Officer and Others RESPONDENT

Date of Decision : 07-01-2009

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(1), 8(2), 8(4), 8(5)
Constitution of India, 1950 — Article 301

Citation : (2010) 28 VST 306

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : N. Prasad and P. Rajkumar, for the Appellant; K. Radhakrishnan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

S. Manikumar, J.—W.P. Nos. 16155 and 16512 of 2008 relate to challenge of the circular dated June 10, 2002, issued by the Special Commissioner and Commissioner of Commercial Tax, Chennai, dated June 10, 2002, by which, the Special Commissioner and Commissioner of Commercial Tax, Chennai, has directed that in cases where notifications have been issued u/s 8(5) of the Central Sales Tax Act, 1956, C/D form is essential. In W. P. No. 16154 of 2008, by order dated March 31, 2008, the Commercial Tax Officer, Thiruvanmiyur, based on the circular, dated June 10, 2002, disallowed the concessional rate of tax at five per cent on the sales of scientific instruments to the educational institutions.

2. As common questions of law and facts are involved, all the writ petitions are taken up together and disposed of by a common order.

3. The brief facts leading to the writ petitions are as follows:

The petitioners are registered dealers, engaged in the sale of scientific instruments and equipment to educational institutions, such as colleges and hospitals. According to them, the scientific instruments and equipment are being used in the laboratories in research work for promotion of laboratory, scientific, artistic or for educational objective. The buyer institutions are non-profit institutions. By the impugned circular issued by the Special Commissioner and Commissioner of Commercial Taxes, dated June 10, 2002 and the consequential order of the Commercial Tax Officer, dated March 31, 2008, the petitioners have been denied the benefit of concessional rate of tax on the sale of scientific instruments effected by them in the course of inter-State trade or commerce to educational institutions and hospitals, as contemplated by Notification No. II(1) CT & RE/ 38/76 dated December 20, 1975 issued u/s 8(5) of the Central Sales Tax Act, 1956.

4. It is the grievance of the petitioners that the Notification No. II(1) CT & RE/38/76 dated December 20, 1975 did not contain any condition for procurement of C declaration forms in respect of inter-State sale of diagnostic reagent, medical instruments and accessories sold to educational institutions and hospitals, which are non-profitable institutions. It is the further contention of the petitioners that the amendment brought about by Act 20 of 2002, would apply only to sales effected to registered dealers and the Government and therefore, disallowance of the reduced rate of tax on the sales of scientific instruments to educational institutions, is wholly arbitrary.

5. The learned Counsel for the petitioners submitted that the amendment brought about u/s 8(5) of the Central Sales Tax Act, by Act 20 of 2002, with effect from May 11, 2002, relates only to one category of sales, viz., sales effected to Government and registered dealers and it does not apply to educational institutions and hospitals. Therefore, the learned Counsel submitted that if the interpretation of the taxing authorities is accepted, then G. O. P. No. 595, CT & RE dated April 15, 1988, would become ultra vires Article 301 of the Constitution of India in that scientific instruments delivered for consumption within the State of Tamil Nadu to the same class of buyers get taxed at a lower rate, when compared to scientific instruments sold for consumption and delivery outside the State.

6. The learned Counsel for the petitioners further submitted that the conclusion in paragraph 6 of the impugned circular, dated June 10, 2002, that in all cases where notification has been issued u/s 8(5), C declaration forms are essential, runs contrary to the plain text of section 8(5)(b), which contemplates that the notification is being issued in two circumstances, viz., sales to registered dealers and also to unregistered dealers.

7. Mr. K. Radhakrishnan, learned Government Advocate, appearing for the respondents, fairly submitted that section 8(5) (b) contemplates only two categories of buyers, viz., sales to registered dealers and Government, and also sales to any other person or class of persons and therefore, the amendment brought about by Act 20 of 2002, is not applicable to sales made to educational

institutions. According to the learned Counsel, it does not impose any condition for obtaining C declaration forms in respect of sale of scientific instruments to educational institutions, such as colleges and hospitals, which are used in the laboratories for research work, for promotion of laboratory, scientific, artistic or educational objectives. His submission is placed on record.

8. Heard the learned Counsel for the parties and perused the materials available on record.

9. Section 8(5) of the Central Sales Tax Act, 1956 as amended by Act, 20 of 2002 dated May 11, 2002 reads as under:

(5) Notwithstanding anything contained in this section, the State Government may, on the fulfilment of the requirements laid down in Sub-section (4) by the dealer, if it is satisfied that it is necessary so to do in the public interest, by notification in the official gazette, and subject to such conditions as may be specified therein, direct,--

(a) that no tax under this Act shall be payable by any dealer having its place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, to a registered dealer or the Government from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in Sub-section (1) or Sub-section (2) as may be mentioned in the notification,

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made, in the course of inter-State trade or commerce, to a registered dealer or the Government by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification, to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in Sub-section (1) or Sub-section (2) as may be mentioned in the notification....

10. The respondents have not disputed the fact that the petitioners are registered dealers of the abovesaid goods to educational institutions and hospitals. In view of the admission of the learned Government advocate, the petitioners cannot be denied the benefits of concessional rate of tax, on the sales of the abovesaid instruments and equipment in the course of inter-State trade or commerce, as contemplated by Notification No. II(1) CT & RE/38/76 dated December 20, 1975. In the above circumstances, it is not necessary for the petitioners to produce C/D declaration forms to claim the benefit of concessional rate of tax in the abovesaid notification.

11. It is also an admitted fact that no such condition has been imposed in the notification dated December 20, 1975 that the registered dealers engaged in sale of the abovesaid goods, have to produce C/D forms for claiming concessional

rate of tax. But by erroneous application of the amendment brought about by section 8(5) of the Central Sales Tax Act, by Act 20 of 2002, with effect from May 11, 2002 to the petitioners, the Department has proceeded to disallow the concessional rate of tax at five per cent to the educational institutions.

12. As rightly contended by the learned Counsel for the petitioners, the amendment is not applicable to the sales effected by any registered dealer of scientific equipment and instruments to educational institutions for use in teaching science or to hospitals. Even after the amendment of the Central Sales Tax Act on May 11, 2002, G. O. P. No. 595, CT & RE, dated April 15, 1988 has not been rescinded and therefore, the petitioners would be entitled to the concessional rate of tax.

13. In view of the specific stand of the learned Counsel for the respondents and considering the merits of the case, the circular memorandum, dated June 10, 2002 is liable to be set aside, insofar as the petitioners are concerned and accordingly, set aside. Consequently, the order, dated March 31, 2008 passed by the Commercial Tax Officer, Thiruvanmiyur Assessment Circle, disallowing the concessional rate of tax at five per cent on the sales to educational institutions (impugned in W. P. No. 16154 of 2008) is set aside.

14. In the result, the writ petitions are allowed as indicated above. No costs. Consequently, connected miscellaneous petitions are closed.