(2011) 08 MAD CK 0168

In the Madras High Court

Case No : Writ Petition (MD) No. 10563 of 2006

Tvl. Boot Captive Power Service (P) Ltd. — APPELLANT

Vs

The State of Tamil Nadu — RESPONDENT

Date of Decision : 08-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Tamil Nadu General Sales Tax Act, 1959 — Section 17(1), 17(3), 4E

Citation : (2011) 08 MAD CK 0168

Hon'ble Judges : Vinod K. Sharma, J

Bench : Single Bench

Advocate : P. Radhakrishnan, for the Appellant; S. Bharathi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Vinod K. Sharma, J.—The Petitioner seeks a Writ in the nature of declaration declaring the notification No. No. II(1)CTRE/100/97 issued vide G.O.Ms. No. 528, CT & RE, dated 21.11.1997, as amended by Notification No. II(i)/CTRE/43(a-3)/98, issued vide G.O.Ms. No. 104, CT&RE, dated 01.04.1998 as illegal and ultra vires of Section 4-E of the Tamil Nadu General Sales Tax Act, 1959 and Central Sales Tax Act, 1956.

2. In the course of business, the Petitioner effects the sales of the Engine Spares to Retail Dealers, manufacturers of other goods for being used in their machineries to the consumers, Exporters and Export Oriented Units. The sales effected to Retail Dealers and consumers are liable to be taxed at the rate specified in the schedule -I to the TNGST Act. The Petitioner has been collecting the sales tax and remitting it to the second Respondent.

3. Section 4-E of the TNGST Act, 1959, reads as under:

A registered 100% export oriented unit or unit located in the Madras Export Processing Zone shall be ent it led for refund of the whole of the tax paid by it on the purchase of any goods,including consumable, packing materials and labels,but excluding plant and machinery, which has been used by such unit in the manufacture and assembling packing or labeling of goods manufactured within the State and assembling, packing or labeling of goods manufactured within the State and sold by way of export by such unit.

Provided that the unit shall satisfy such conditions and shall submit an application for refund in such manner and in such form as maybeprescribed.

G.O.Ms. No. 528, CT&RE, dated 21.11.1997 -Notification No. II(!)/CTRE/100/97 - as amended by G.O.Ms. No. 104 CT&RE, dated 01.04.1998 -NotificationNo.II(1)/ CTRE/43(a-3)/98-grants.

Exemption in respect of the pay able by any dealer on the sale of raw materials, packing materials and consumable goods to the registered 100% Export Or iented Units in this State and units located in the Chennai Export Processing Zone.

4. The Development Commissioner requested the Government that instead of refund of tax the export oriented units may be exempted from payment of sales tax as the amount involved for the year 1996-1997 was only Rs. 26 lakhs. On the recommendations of the Development Commissioner, State Government in exercise of powers u/s 17(1) of the TNGST ACt, issued impugned notification dated 21.11.1997, which reads as under:

COMMERCIAL TAXES and RELIGIOUS ENDOWMENTS(B2) DEPARTMENT

G.O.Ms. No. 528

Dated: 21.11.1997

READ:

From Development Commissioner, MEPZ,Chennai-45.

(D.O. No. 19/50/96/EOA-TN/2423, dated 17.10.1996 and 18.2.97

From SC&CCT,Chennai.

(D.O. Lr. No. A3/17816/97, dated 26.2.1997)

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Section 4(E) of the Tamil Nadu General Sales Tax Act,1959 providesas below:

A registered 100% export oriented unit or unit located in the Madras Export Processing Zone shall be entitled for refund of the whole of the tax paid by it on the purchase of any goods, including consumables, packing materials and labels,but excluding plant and machinery,which has been used by such unit in the manufacture and assembling packing of labelling of goods manufactured within the State and sold by way of export of such Unit.

Provided that the unit shall satisfy such conditions and shall submit an application for refund in such manner and in such form as may be prescribed.

In his letter first read above,the Development Commissioner, Madras Export Processing Zonehas indicated that the Tamil Nadu Government has been refunding sales tax paid by the Units in Madras Export Processing Zone under the Tamil Nadu General Sales Tax Act and that there fund has been made by SIPCOT Tax Act and the amount involved by way of reimbursement has been of the order of Rs. 26 lakh sonly during 1996-97. He has requested the Government that instead of there fund of tax, the 100% Export oriented units and the units located in Madras Export Processing Zone (MEPZ) may be exempted from payment of sales tax.

Government examined the matter in consultation with the Special Commissioner and Commissioner of Commercial Taxes. With a view to encourage the exports from Tamil Nadu they arrived at a decision that all raw materials purchased with in the State by registered 100% Export Oriented Units and units located in Chennai Export Processing Zone(CEPZ) will be fully exempted from payment of sales tax.

The appended notification will be published in the Tamil Nadu GovernmentGazette.

ANNEXURE NOTIFICATION

In exercise of the powers conferred by Sub-section(1) Section 17 of the Tamil Nadu General Sales Tax Act,1959(Tamil Nadu Act 1 of1959),the Governor of Tamil Nadu hereby makes an exemption in respect of the tax pay able by any dealer on the sale of raw materials to the registered 100% Export Oriented Units in this State and units located in the Chennai Exporting Processing Zone.

EXPLANATORY NOTE

(This does not form part of the notification but is intended to indicate the general purport).

Section 4(E) of the Tamil Nadu Sales Tax Act, 1959 provides that a registered 100% export oriented unit or unit located in the Chennai Export Processing Zone shall be entitled for refund of the whole of the tax paid by it on the purchase of any goods, including consumables, packing materials,labels,but excluding plant and machinery.

The Development Commissioner requested the Government that instead of refund of tax,the said units may be exempted from payment of sales tax. The amount involved by way of refund was Rs. 26,00 lakhs during 1996-97. With a view to encourage the exports from Tamil Nadu, Government have decided that all raw materials purchased within the State by registered 100% Export oriented units and units in Chennai Export Processing Zone(CEPZ) will be fully exempted from payment of sales tax.

This notification is intended to achieve the above object.

5. The notification further modified vide notification dated 1.4.98, which reads as under:

EXEMPTION of TAX PAYABLE BY ANY DEALER ON SALE of RAW MATERIALS TO REGISTERED 100PERCENT EXPORT ORIENTED UNITS IN THIS STATE and UNITS LOCATED IN THE CHENNAI EXPORT PROCESSING ZONE

VARIATION TO NOTIFICATION

No. ii(1)/ctre/43(A-3)/98(TNGSTPartII -Section1/April

1,1998

(G.O.Ms. No. 104,Commercial Taxes and Religious Endowments 1st April 1998)

In exercise of the powers conferred by Sub-section(3) of Section 17 of the Tamil Nadu General Sales Tax Act, 1959(Tamil Nadu Act 1 of 1959), the Governor of Tamil Nadu hereby makes the following variation to the Commercial Taxes and Religious Endowments Department Notification No.II(1)/CTRE/100/97published at Page 90 of part II--Section 1 ofthe Tamil Nadu Government Gazetedated the 17th December1997.

VARIATION

In the said notification for the expression ''raw materials'', the expression "raw materials, packing materials and consumable goods" shall be substituted.

EXPLANATORY NOTE

(This does not form part of the notification but it intended to indicate its generalpurport) With a view to encourage the exports from Tamil Nadu the government have decided that packing materials and consumable goods purchased within the State by registered 100 percent Export Or iented Units and Units of the Madras Export Processing Zone (MEPZ) may also be exempted from payment of sales Tax.

The notification is intended to achieve the above object.

6. The only ground of challenge by the Petitioner, is that while granting exemption, the State Government has only exempted raw, material, packing materials, consumable goods whereas in Section 4-E "any goods" is included. Therefore, the notification being contrary to Section 4-E of the Act, is not sustainable in law.

7. This contention cannot be accepted. The notification issued u/s 17(1), is in exercise of delegated legislative power of the State Government. It is open to the Government to exempt any type/category of goods. This Court in exercise of jurisdiction under Article 226 of the Constitution of India cannot interfere with the exercise of legislative powers of the Government.

8. u/s 17(1), it is for the State Government to decide, as to the exemptions to be granted. "Any goods" mentioned u/s 4-E is subject to exclusion of plants and machinery.

9. Therefore, it is not for this Court to order the inclusion of any other items in the notification issued u/s 17(1) of the Act, it being legislative function, therefore is not subject to judicial review.

10. This Court can only look into the validity of the Act or notification to see whether it is in consonance with law, but, certainly cannot direct the State Government to issue a notification in particular manner as contended by the learned Counsel for the Petitioner.

11. The inclusion of raw material, packing materials, consumable goods, only for exemption cannot be said to be violative of Section 4-E of Tamil Nadu General Sales Tax Act,to call for any interference, as prayed for. This Court cannot legislate the prayer in the Writ is in the nature asking this Court to direct,the Respondent to include additional issues for exemption, which is not permissible in law.

12. Consequently, the Writ Petition is dismissed.

13. No costs.

