IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.11.2016

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.Nos.28365 of 2013 and 12211 of 2014
and
M.P.Nos.1 & 2 of 2013 and 1 & 2 of 2014 in W.P.No.28365 of 2013
and
M.P.No.1 of 2014 in W.P.No.1211 of 2014

National Textile Corporation Ltd.,
(for Pankaja Mills Unit),
Rep. by its Deputy Manager (Finance),
K.V.Balasubramaniam .. Petitioner in W.P.28365/13

National Textile Corporation Ltd.,
(for Sri Rangavilas Ginning,
Spinning & Weaving Mills Unit),
Rep. by its Deputy Manager (Finance),
K.V.Balasubramaniam .. Petitioner in W.P.12211/14

Vs

The Assistant Commissioner,
Trichy Road Circle,
Coimbatore. .. Respondent in W.P.28365/13

The Commercial Tax Officer,
Peelamedu (South) Circle,
Coimbatore. .. Respondent in W.P.12211/14

W.P.No.28365 of 2013 : Writ petition filed under Article 226 of the

Constitution of India praying for a Writ of Certiorari, to call for the records on the files of the Respondent herein in TIN No.33112140142/11-12 dated 30.08.2013 in so far as it relates to levy of tax on the value of inter unit transfer of cotton and cotton yearn, being tax amount of Rs.23,02,540/- and penalty thereon of Rs.23,02,540/- and quash the same.

W.P.No.12211 of 2014 : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari, to call for the records on the files of the Respondent herein in TIN No.33932103316/2011-12 dated 28.03.2014 in so far as it relates to tax on trunover of Rs.45,73,203/- and the penalty thereon and quash the same.

For Petitioner in both WPs : Mr.N.Prasad

For Respondent in both WPs : Mr.K.Venkatesh, GA

COMMON ORDER

Heard Mr.N.Prasad, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondents and perused the materials placed on record, including the written instructions given by the Assessing Officer to the learned Special Government Pleader, vide letter dated 19.12.2014.

2. The short issue, which falls for consideration is, whether the

petitioners herein, which are two units of National Textile Corporation Ltd., could be treated as two different entities and the transfer of yarn from one of the entity to the other, for the purpose of manufacture of cloth, which is an exempted commodity, would amount to sale.

3. The respondent issued show cause notices to the petitioners. The petitioner in W.P.No.28365 of 2013 is a unit called Pankaja Mills and the petitioner in W.P.No.12211 of 2014 is Sri Rangavilas Ginning, Spinning & Weaving Mills. The petitioners case is that both the units are units of the National Textile Corporation Ltd. The respondent issued notices dated 24.07.2013 and 27.12.2013 to both the petitioners. The allegation in both the notices are identical.

4. The respondent state that the petitioners were assessed under self-assessment under Section 22[2] of the Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as "the Act"] for the Assessment year, namely, 2011-12. It is further stated that a surprise inspection was conducted in the place of business of the petitioners on 08.03.2012 and 09.03.2012 respectively and during the inspection, two defects were noticed, one pertained to reversal of ITC under Section 19[5][a] of the Act. However, this Court need not go into the correctness of the said issue, because the prayer sought for in the Writ Petitions does not seek for any relief in the said issue. The second issue is common in both notices, wherein, the respondent stated

that there is transfer of cotton and cotton yarn to the other unit of National Textile Corporation Ltd. and it should be treated as sale, since the units are individual mills, having different TIN numbers.

5. The contention of the General Manager of the petitioners stating that they have single PAN number, was rejected and it was observed that movement of goods to another unit having different TIN number should be treated as sale and sale invoices should be raised and tax is to be paid. Therefore, the respondent proposed to tax the inter unit transfer, denied exemption to the said turnover and treated them as sale and levied tax at the rate of 4% / 5% respectively. On receipt of these notices, the petitioner submitted separate replies dated 23.08.2013 and 29.01.2014 respectively. It was stated that in order to attract sales tax, there should be a sale and sale has been defined under Section 2[33] of the Act as transfer of property of goods by one person to another in the course of business for cash, deferred payment or other valuable consideration. It was stated that transfer of cotton and cotton yarn only to their own unit, which is an unit of National Textile Corporation Ltd.

6. The petitioners stated that they are the units of National Textile Corporation Ltd., which is a limited company, having different units and the units are located all over India in the southern region and the names of

fourteen units were furnished. Copy of the Annual Report for the year 2011-2012 was filed, wherein, the list of mills under the operation of National Textile Corporation Ltd. is given as annexure-A and the details were also extracted in the explanation. Further, it was submitted that National Textile Corporation Ltd., as whole has been assessed to income tax as single unit and other Government departments like Department of Company Affairs, Joint Directorate of Foreign Trade, Ministry of Commerce, etc. have considered all the units of National Textile Corporation Ltd. as single entity. Further, it was submitted that they were assessed to sales tax as a single unit, till 31.03.2011.

7. Further, the petitioner contended that due to different locations of the unit in Tamil Nadu, they had applied for separate registration, for each unit on 01.04.2011 and the Department issued separate registration certificate, clearly mentioning that it is a unit of National Textile Corporation Ltd. Thus, all the units belong to National Textile Corporation Ltd. and transfer of goods between their own units cannot be termed as sale. Further, there is no buyer and seller in this case and this fundamental requirement being absent, it cannot be treated as sale.

8. Reliance was placed on the decision of the Hon'ble Division Bench of the Hon'ble High Court of Andhra Pradesh in the case of *The K.C.P. Limited Vs State of Andhra Pradesh 88 STC 374*. By referring to the said

decision and after setting out the factual issues in the said case, it was pointed out that the definition of "sale" which was considered by the Andhra High Court is similar to the definition of sale under the Act. Therefore, the decision is applicable to the petitioners case.

9. Further, it was submitted that the show cause notices having been issued, based on the report of the Enforcement Department, it is a case of clear change of opinion and the assessment cannot be re-opened. The respondent rejected the explanation given, stating that since both the units have separate TIN numbers, they have to be treated as different entities and inter unit transfer is sale. The reliance placed on the income tax assessment and the other proceedings under the Companies Act, Foreign Trade Development and Regulation Act, etc. were brushed aside, stating that they cannot have any effect on the proceedings under the Act. Thus, the only reason to treat the inter unit transfer as sale, because, both units have different TIN numbers.

10. In the considered view of this Court, the respondent applied a wrong test, which has resulted in a wrong decision. The registration certificate issued to both the transferor and transferee unit, clearly shows that they are units of National Textile Corporation Ltd. Therefore, at the first instance, the respondent should have applied the right test to ascertain, as to whether both the units form part of a single entity. There could not have been any doubt on the submission made by the petitioners, because, the

National Textile Corporation Ltd. is a wholly owned Government company. That apart, the transferor unit supplied cotton and cotton yarn to the transferee unit, which is made into cloth and admittedly cloth is an exempted commodity. Therefore, the interpretation given by the respondent is flawed, because of applying of the wrong test to the facts of the case.

11. Furthermore, there is no other discussion to substantiate the finding that the transaction should be treated as sale. When there is nothing to show that the basic elements to term the transaction as sale, in terms of the definition of sale, as defined under Section 2[33] of the Act were not fulfilled, the transaction could not have been treated as sale. There is no other material in the hands of the Assessing Officer, to come to such a conclusion that the transaction is sale, merely because the units have separate registration numbers.

12. In *K.C.P. Limited [supra]*, somewhat an identical issue arose for consideration and the Hon'ble Division Bench pointed out that the registration certificate obtained by each branch or unit may, at best show, that they are separate assessable entities and it has no bearing on the question, whether they are distinct and different legal entities capable of transferring property in goods from each other. Further, it was pointed out that separate registration certificate issued to the units or branches of a common unincorporated company have never been considered to be a legal personality on such units and branches. At this juncture, it is worthwhile to

refer the relevant portion of the judgment.

"... The only circumstance on which the appellate authorities have relied upon are that [1] the petitioner as well as the other two units are registered as dealers under the Sales Tax Act and such registration shows that each unit is separate and independent of the other, and [2] the petitioner itself treated that transaction as a sale by effecting debit and credit entries in the accounts in respect of the cost of the cement despatched and that even sales tax was charged. ... The registration under the Sales Tax Acts does not necessarily mean that the registered dealer becomes a separate legal entity different from its creator, viz., the company proper. ... Rule 29[4] of the APGST Rules enjoins that every registration certificate shall cover one place of business only [other than a place used merely for storage of goods]. Thus, even in a case where a single person has two places of business in the State, two registration certificates are granted. On that account, it cannot be said that each place of business of that person is a separate and distinct legal entity. The position is no different here. Notionally, the different units of a company doing business at separate places may be regarded as separate dealers for the purpose of administrative convenience or for assessment purpose. But, that does not mean that each unit would thereby become an independent legal personality different from the company itself. If the test of registration as a dealer under the Sales Tax Acts is taken as the true index of the separate juristic personality of the registered unit or concern, it would lead to anomalous and unintended results. ... The separate registration of various units of a single company under the respective Sales Tax Acts may be necessitated either

on account of geographical location of the units or by reason of statutory obligation imposed under the relevant provisions to obtain a separate registration certificate for each place of business. ... The registration certificate obtained by each branch or unit may, at best show, that they are separate assessable entities. But it has no bearing on the question whether they are distinct and different legal entities capable of transferring property in goods from each other. It is to be noted in this context that the language used in the provision defining "sale", either under the APGST Act or the CST Act is not "from one registered dealer to another", but "by one person to another". ... Separate registration certificates issued to the units or branches of an unincorporated company have never been considered to be sufficient to confer the legal personality on such units and branches."

13. As pointed out in the above decision, registration under the Sales Tax Act does not necessarily mean that the registered dealer becomes a separate legal entity different from its creator, namely, the company proper. In the instant case, there can hardly be any doubt on this issue, because the registration certificate issued to both the petitioners mentions that they are units of National Textile Corporation Ltd. This being not in dispute, ought not to have been brushed aside by the respondent.

14. In *K.C.P. Limited [supra]*, apart from rendering the above finding, there was reference to another decision of the Division Bench of

Kerala High Court. It would be more apt to refer to the case of *Government Wood Works Vs State of Kerala 69 STC 62*, where an identical issue arose for consideration, whether the petitioner was a registered dealer engaged in manufacture of furniture, being a unit owned by the Kerala State Small Industries Development and Employment Corporation Ltd. [SIDECO]. The Assessing Officer did not impose tax on the value of the furniture of supply to the other units of SIDECO. However, the Deputy Commissioner, exercising power under Section 35 of the Kerala General Sales Tax Act, 1963, reopened the assessment, on the ground that since the petitioner has only paid Rs.10/- towards renewal fee of its registration certificate and not paid any branch certificate renewal fee for the other units, the supplies made to the other units could not be considered as branch transfer, but sales liable to be taxed. The petitioner's appeal against the order was dismissed by the Tribunal.

15. In a revision petition filed by the petitioner therein, it was contended that transfer of furniture to the other units of SIDECO would not come under the definition of sale. While considering the said issue, the Division Bench referred to the decision of the Allahabad High Court in *U.P. State Cement Corporation Ltd. Vs Commissioner of Sales Tax [1979] 43 STC 476 [Allahabad]*, which was also taken note of in *K.C.P. Limited* and held that, the existence of two entities, different from each other, capable of transferring property in goods from one to the other was the desideratum of

a transaction of sale. The SIDECO, a corporate entity, wholly owned by the State of Kerala had different units carrying on activities in different parts of the State, but they were parts of the same legal entity. When goods were transferred from one unit to another, there was no sale of goods at all.

16. The above referred judgments would squarely apply to the facts and circumstances of this case. As pointed out earlier, the registration certificates of both the units state that they are units of National Textile Corporation Ltd. Thus, for all the above reasons, this Court has no hesitation to hold that the impugned proceedings, insofar as treating both the petitioners as distinct legal entities and treating the inter units transfer of cotton and cotton yarn to the transferee, namely, the petitioner in W.P.No.12211 of 2014 cannot be treated as sale transaction and the finding that merely, because there are two TIN numbers to treat both the units as separate units and the finding rendered by the respondent in this regard is wholly untenable.

17. For all the above reasons, the Writ Petitions are allowed and the impugned orders in TIN No.33112140142/11-12 dated 30.08.2013 and TIN No.33932103316/2011-12 dated 28.03.2014 respectively are hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

08.11.2016

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To
1.The Assistant Commissioner,
Trichy Road Circle,
Coimbatore.

2.The Commercial Tax Officer,
Peelamedu (South) Circle,
Coimbatore.

T.S.SIVAGNANAM, J.

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