

(2013) 11 MAD CK 0199

Madras High Court

Case No: Writ Petition No. 6978 of 2008 and M.P. No's. 2 of 2008 and 1 of 2009

M/s. Natural Aroma Exports

APPELLANT

Vs

The District Forest Officer, Salem
Division, The Commercial Tax
Officer, Salem Division and The
Branch Manager, Bank of India

RESPONDENT

Date of Decision: Nov. 13, 2013

Hon'ble Judges: A. Arumughaswamy, J

Bench: Single Bench

Advocate: Nalini Chidambaram, for Ms. C. Uma, for the Appellant; M.K. Subramaniam,
Special Government Pleader for Respondent No. 1 and Mr. Kanmani Annamalai, for the
Respondent

Judgement

@JUDGMENTTAG-ORDER

A. Arumughaswamy, J.

The petitioner is the registered dealer under the Central Sales Tax Act. It had participated in the auction conducted for sale of sandalwood by the 1st respondent on 25.7.2002 and he is the successful bidder for 33.000 MT of sandalwood which same was confirmed by the 1st respondent by his letter dated 12.9.2002. Though the petitioner was directed to pay 12% sales tax on the total sale amount for 33.000 MT, since the petitioner has participated in the auction conducted by the 1st respondent and purchased the sandalwood for the purpose of moving the same out of the State of Tamil Nadu to the State of Uttar Pradesh, the inter state movement arises as an incident of the contract of sale, according to the petitioner, he was liable to pay tax at 4% only. In this regard, the petitioner has filed W.P. Nos. 35965 and 35966/2002 before this Court and also filed W.P.M.P. Nos. 53861 to 53866 of 2002 in which by a Common order dated 18.9.2002, this Court has directed the petitioner to pay only 4% Sales Tax and furnish bank guarantee for the remaining 8% to the 2nd respondent and take delivery of the Sandalwood.

2. Pursuant to the order of this Court, the petitioner paid 4% tax and furnished Bank Guarantee B.G. No. 31/17 for Rs. 19,73,598/- for 18.5 metric tonnes of Sandalwood and also furnished bank guarantee for Rs. 12,08,892/- for 14.5. metric tonnes of Sandalwood. After taking delivery, the petitioner has submitted the Form C in respect of 14.5 metric tonnes of Sandalwood for establishing his case with the 1st respondent. The 1st respondent thereafter passed an order dated 19.11.2002 extending the Bank Guarantee up to 26.3.2003.

3. Further, as per the Common order dated 19.8.2002, the 2nd respondent had to release the bank guarantee in No. 31/18 for Rs. 12,08,892/- on scrutiny of documents. But, by mistake the same was released by the 1st respondent. To rectify the same, the petitioner has also filed a Modification Petition in W.P.M.P. No. 23586 of 2005 in W.P. 35965/2002 enabling the 1st respondent to release the bank guarantee in No. 31/18 for Rs. 12,08,892/- and the same was modified by order dated 13.4.2006 of this Court. Accordingly, the 2nd respondent by his order dated 5.9.2003 accepted the "H" Form and recommended for exemption from payment of Sales Tax. But the 1st respondent refused to release the BG in 31/17 amounting to Rs. 19,73,590/- furnished by the petitioner towards 12% Sales Tax on the 18.500 MT of Sandalwood tax paid. Thereafter, the Writ Petition in W.P. No. 579 of 2004 filed by the petitioner was also dismissed by this Court by order dated 21.1.2004.

4. Further, according to the petitioner, the respondents misconstrued the modification order passed by this Court and directed the petitioner to issue fresh bank guarantee for Rs. 12,08,892/- and the 1st respondent is retaining the bank guarantee in Ref. No. 31/17 dated 5.9.2002 issued by the Bank of India for a sum of Rs. 19,73,598/- for 18.5 MT of Sandalwood. Hence the present Writ Petition.

5. Learned Senior Counsel representing the learned Counsel for the petitioner would submit that both the overseas sale and inter state sale have been involved in this transaction. The learned Senior Counsel would further submit that for overseas sale, the authority concerned has granted an exemption and regarding the inter state sale, the 4% tax has been remitted by the authority concerned and for the balance 4 = % tax, the amount comes to Rs. 12,08,892/- for 14.5. metric tonnes of Sandalwood and for overseas Sale, the amount comes Rs. 19,73,598/- for 18.5 metric tonnes of Sandalwood. The learned Senior Counsel would also submit that aggrieved over the order passed by this Court in W.P.M.P. Nos. 53861 to 53866 of 2002 in W.P. 35965/2002 to 35966 of 2002, dated 18.9.2002 filed by the petitioner, the petitioner, instead of depositing 4 = % tax before the 2nd respondent, deposited before the 1st respondent and after filing proper M.P. by order dated 13.4.2006 of this Court, the same was also ratified. Therefore, the bank guarantee has to be released by the 1st respondent. Hence, the learned Senior Counsel would pray to allow the present Writ Petition.

6. Learned Special Government Pleader appearing for the 1st respondent would contend that the petitioner has paid 4% Sales Tax of Rs. 6,04,446/- by Demand Draft

and for the remaining 8% disputed amount of Rs. 12,08,892/- the petitioner has furnished the bank guarantee No. 31/18 issued by the 3rd respondent which has to be in favour of Commercial Tax Officer, Salem and the sandal woods were released. The learned Special Government Pleader would further submit that the Bank Guarantee No. 31/18 of Rs. 12,08,892/- which was furnished towards sales tax was released to the petitioner as per the letter of the Special Commissioner and Commissioner of Commercial Taxes dated 28.1.2002 was released to the petitioner by the 1st respondent instead of 2nd respondent. The learned Special Government pleader would also submit that for the balance of 14.5 tonnes, the petitioner has to pay sales tax. Hence, the bank guarantee for Rs. 19,73,598/- was with held by the department. Hence, according to the learned Special Government Pleader for tax, the present Writ Petition has to be dismissed.

7. Learned Counsel for the 2nd respondent would submit that no bank draft has been presented by the petitioner in favour of the 1st respondent. He would further submit that if any Fixed Deposit is released, the Government will loose the tax amount. Hence, he would pray to dismiss the present Writ Petition.

8. Heard both sides and I have also perused the materials available on record carefully.

9. The facts that the petitioner is the successful bidder in the auction conducted for sale of sandalwood by the 1st respondent on 25.7.2002 which was also confirmed by the 1st respondent and as per the direction, he has to pay 12% Sales Tax, as per the direction issued by this Court, the petitioner has got exemption to pay the sales tax to some extent are not in dispute. Accordingly, the petitioner has to pay only 4% of Sales Tax and for the remaining 8%, the petitioner has issued the bank guarantee in B.G. 31/17 for Rs. 19,73,598/- for 18.5 Metric Tonnes of Sandalwood are also not in dispute. But, it appears that the petitioner has issued the same to the 1st respondent instead of issuing the same to the 2nd respondent and the same was later on modified by the orders of this Court in W.P.M.P. No. 23586/2005 in W.P. 35965/2002 dated 13.4.2006.

10. Now, the grievance of the petitioner is that as far as the inter state sale is concerned, exemption was granted to the petitioner as per the letter of the 2nd respondent dated 5.9.2003. But, instead of returning the bank guarantee to the tune of Rs. 12,08,892/-, they wanted to retain the same for yet another matter which is pending before the 2nd respondent. Hence, according to the petitioner, the same has to be returned.

11. From the perusal of the records filed in the form of typed set, it is seen that the Commercial Tax Officer, Salem, vide their letter No. ROC. No. 2256/2002 dated 5.9.2003 has allowed for exemption of Tax for Overseas turnover for a sum of Rs. 1,64,46,650/-. The first respondent issued a letter dated 5.3.2007 by saying that turnover has not attracted as exempted from tax.

12. Now, the contention of the petitioner is that after issuing certificate by the Commercial Tax Officer for exemption of tax, the first respondent is not expected to retain the amount of Rs. 19,73,598/-. Hence, he prays that the said amount has to be returned to the petitioner.

13. The contention of the first respondent is that even though the second respondent as per letter dated 5.9.2003 has given exemption of tax for Overseas Sale, the petitioner has to make payment since the ingredients of the Overseas Sale has not been completed and the sale has been done only within the State and this has been detected after issuance of the exemption certificate for Overseas sale.

14. The next contention of the first respondent is for the same relief, already writ petition has been filed by the petitioner and the same was dismissed. Since the petitioner has not filed any writ appeal as against the said order, it has become final. In these circumstances, the petitioner is not entitled to file another Writ Petition for the same relief. Hence, he prays that the writ Petition has to be dismissed.

15. From the perusal of the impugned order, it is seen that the case of the first respondent is that the sandal wood has been sold within the State. Therefore, the petitioner is not entitled for the exemption from the Sales Tax pursuant to the exemption certificate issued by the Commercial Tax Officer on the earlier occasion for Overseas Sale. Regarding the release of Rs. 19,73,598/- furnished by the petitioner towards the 12% Sales Tax on the 18.500 MT of Sandalwood purchased by the petitioner in respect of the interstate sale, the petitioner has filed W.P. No. 579 of 2004 and the same was dismissed by this Court by order dated 21.1.2004. The Assessee also closed down his business. No document has been produced by the assessee to comply with the statutory formalities that the turnover has been fulfilled the ingredients of interstate sale. Since the Writ Petitioner has not produced any documents regarding the interstate sale, he is liable to pay the sales tax since he has sold sandalwoods within the State. Even though on the earliest occasion, the 1st respondent Forest Officials have released the amount of Rs. 12,08,892/- to the petitioner, it will not mean that the 2nd respondent cannot retain the present impugned Demand Draft since already the writ petition filed by the petitioner for the same relief for the same turnover, it has been dismissed for the same reason. Furthermore, as rightly contended by the first respondent similar writ petition has been filed in W.P. No. 579 of 2004 for the same relief and the same was dismissed by this Court by order dated 21.1.2004. Under these circumstances, the second writ Petition for the same relief is not maintainable in law.

16. In this regard, it appears that the Writ petition filed by the petitioner was dismissed by this Court in W.P. 579/2004 by order dated 21.1.2004. It is also to be noted that against the dismissal order, the petitioner, without filing an appeal, has chosen to file this Writ Petition again after two years. Hence, the present Writ Petition is also liable to be dismissed. In view of all the above, the Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are

also closed.