

Read :- 1. An application dt. 6th August, 2006 is received from M/s. Vinod Stainless Steel Works.

Heard:- Shri G. S. Jetly, Sr. Advocate alongwith Shri Rajiv S. Jetly, C.A. attended on 17/08/2006.

PROCEEDINGS

(Under section 24 of the Maharashtra Value Added Tax Act, 2002)

No. DDQ-11-2005/Adm-5/65/B-01

Mumbai, dt. 11.09.2006

An application dated 6th June, 2005 is received from M/s. Vinod Stainless Steel Works requesting for rectification of the determination order DDQ Order No. DDQ-11-2005/Adm-5/65/B-3 dt. 10th April, 2006.

BACKGROUND OF THE CASE

02. The applicant had applied to this office earlier for determination of the tax rate applicable to his products

- 1] Deluxe Hot Tiffin,
- 2] Hot Casserole,
- 3] Hot Pot

The applicant had applied under the Bombay Sales Tax, 1959 as well as the Maharashtra Value Added Tax Act, 2002. Both the cases were kept for hearing on a common date. The determination orders under both the Acts were passed by orders as follows :-

[1] No. DDQ-11-2005/Adm-5/17/B-1 Mumbai, dt. 13/03/2006 under the Bombay Sales Tax, 1959

[2] No. DDQ-11-2005/Adm-5/65/B-3 Mumbai, dt. 10/04/2006 under the Maharashtra Value Added Tax Act, 2002

In both the above orders, the prayer of prospective effect to the determination, if held otherwise, was considered.

Under the Bombay Sales Tax, 1959, the liability of the applicant as regards the products, Hot Pot, Hot Casserole and Deluxe Hot Tiffin, was protected for the period starting from 1/1/1996 and ending upto 23/11/2004.

Under the Maharashtra Value Added Tax Act, 2002, the applicant's prayer being not supported by convincing reasons, the same was not accepted.

DETAILS SUBMITTED ALONGWITH THE APPLICATION

03. The applicant has submitted the following documents in connection with the present application for rectification :-

- i) A copy of the Trade Circular issued by the Gujarat Sales Tax Department.
- ii) A copy of the judgment in the case of Stovekraft Pvt. Ltd. v. State of Karnataka [2006] – [147 STC 329

iii) A copy of the relevant portion from the Schedule 'C' of the Gujarat Sales Tax Act.

CONTENTION AND HEARING

04. The case was fixed for hearing on 17/08/2006 when Shri G. S. Jetly, Sr. Advocate alongwith Shri Rajiv S. Jetly, C.A. attended.

It is stated that at the time of hearing of both his applications, i.e., under the Bombay Sales Tax, 1959 as well as the Maharashtra Value Added Tax Act, 2002, he had argued on the point of prospective effect under the Bombay Sales Tax Act, 1959 as well as under the Maharashtra Value Added Tax Act, 2002. However, the Commissioner adjudicated upon the prospective effect in his determination order under the Maharashtra Value Added Tax Act, 2002 without considering his arguments of prospective effect. He reiterated the same arguments again.

He further stated that in other States in India where the entry is similar, the States have clarified that the products of similar nature as his, are covered by the schedule entry for utensils. To support his argument, he has even furnished a copy of the Trade Circular issued by the Gujarat Sales Tax Department wherein a list of the items covered by the schedule entry for utensils are mentioned, one of them being "dabba meant for keeping food hot".

Another argument put forth by the applicant is that, the applicant received the determination orders under the Bombay Sales Tax, 1959 as well as the Maharashtra Value Added Tax Act, 2002 almost simultaneously. Hence, there was no occasion for him to place his arguments as above in favour of the plea for prospective effect to the determination order under the Maharashtra Value Added Tax Act, 2002.

He has placed reliance upon the Karnataka High Court Judgment in the case of Stovekraft Pvt. Ltd. v. State of Karnataka [2006] – [147 STC 329 (Karnataka High Court)] in support of his plea for prospective effect to the determination order under the Maharashtra Value Added Tax Act, 2002.

He stated that Trade Parlance is the only test that should be the criteria for the decision in his case as regards whether his products Hot Pot, Hot Casserole and Deluxe Hot Tiffin are covered by the schedule entry for utensils or not.

It is stated that over the years, his classification under the Bombay Sales Tax Act, 1959 is accepted by the department. Also, there is no occasion for him to know any contrary view being taken by the Commissioner or any other competent authority or court.

In view of this, he deserves a case for prospective effect. It is stated that these arguments which were made during the hearing are inadvertently not considered while adjudicating the issue and hence, it is requested to rectify the said order.

Hence, the applicant has made this application to expunge the relevant paras adjudicating upon prospective effect in the determination order dt. 10/04/2006 under the Maharashtra Value Added Tax Act, 2002 and consider his submissions as made in the present hearing in favour of the plea for prospective effect.

OBSERVATIONS

05. I have carefully gone through all the facts placed before me.

The issue involved is the determination given as regards prospective effect to the rate of tax applicable under the Maharashtra Value Added Tax Act, 2002 to the products of the applicant, viz, Hot Pot, Hot Casserole and Deluxe Hot Tiffin.

06. M/s. Vinod Stainless Steel Works, had applied for determination under the Bombay Sales Tax Act, 1959 and

2] Hot Casserole, 3] Hot Pot. The cases were fixed for hearing on a common date. It was pleaded during the hearing of the above mentioned two applications that, in case the determination is held otherwise prospective effect be given to the determination order. It was specifically emphasised that unlike under the Bombay Sales Tax Act, 1959 where many specific entries relating to related but distinct items like utensils, cutlery, hot cases/casseroles etc. existed, under the Maharashtra Value Added Tax Act, 2002 there is a single entry in the Schedule 'C' on ferrous/non-ferrous domestic utensils (entry C-33), and hence, they were under the bonafide impression that all such items under different entries of the Bombay Sales Tax Act, 1959 Schedule are subsumed under entry C-33 of the Maharashtra Value Added Tax Act, 2002. Now in the present hearing, it is the stand of Shri Rajiv S. Jetly, C. A. that his arguments for prospective effect were not considered while determining the issue.

As regards prospective effect in respect of his application under the Maharashtra Value Added Tax Act, 2002, he has submitted that he had made elaborate arguments for prospective effect under VAT also. His products were held as taxable at a higher rate in both the determination orders. He has laid stress on the point that both the determination orders were received by the applicant within a span of short time owing to which the applicant could not take a stand in the matter of application under the Maharashtra Value Added Tax Act, 2002.

What can be gathered from the above is that this is a perfect case of mutual misunderstanding as regards the facts of the case. The applicant was making his submissions for prospective effect in respect of the application under the Bombay Sales Tax, 1959 and had a bonafide belief that his contention would be understood as being so.

While passing the order, inadvertently the applicant's arguments were not considered while passing the determination order dt. 10/04/2006 under the Maharashtra Value Added Tax Act, 2002.

Since on the similar facts, the prospective effect is granted under the Bombay Sales Tax Act, 1959, it should have also been granted under the Maharashtra Value Added Tax Act, 2002.

Since hearing for both the cases was on a common date it appears that his arguments for prospective effect under the Maharashtra Value Added Tax Act remain to be considered. The mistake is thus apparent and hence, it is sought to rectify it.

I am satisfied that an apparent mistake is committed while deciding the issue by considering the appellants arguments during the joint hearing, a fresh look at the adjudication as regards the issue of prospective effect dealt with by me in the determination order dt. 10th April, 2006 is required. This would thereby render it necessary to pass a fresh order as regards the issue in question under the Maharashtra Value Added Tax Act, 2002 and therefore the need for these rectification proceedings

08. In view of the deliberations put herein above, I pass an order of rectification as follows:-

ORDER

(Under section 24 of the Maharashtra Value Added Tax Act, 2002)

No. DDQ-11-2005/Adm-5/B-

Mumbai, dt.

The para No. 08 of the "proceedings" as well as the last para forming part of the "order" from the determination order DDQ Order No. DDQ-11-2005/Adm-5/65/B-3 dt. 10th April, 2006 are herewith ordered as being deleted from the said determination order.

The request of the applicant for prospective effect has been accepted for the reasons as discussed at length in the para Nos. 06. and 07. in the "proceedings" of this present "order".

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