

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 4TH DAY OF FEBRUARY, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

W.P. NOS. 52272/2016 & 58523-58533/2016

C/V

W. P. NOS. 25450/2016 & 26503-26513/2016,

38863/2016 & 48608-48618/2016,

51482-51483/2016 & 51543-51552/2016,

16458/2017 (T-RES)

IN W.P. NOS. 52272/2016

& 58523-58533/2016:

BETWEEN:

M/S. WIPRO ENTERPRISES (P) LTD
(FORMERLY PART OF M/S WIPRO LTD.,
CONSUMER CARE AND LIGHTING DIVISION),
NO.105, HOOTAGALLI INDUSTRIAL AREA,
MYSORE-570018.

REPRESENTED BY
(VISHAL MITTAL GROUP MANAGER LEGAL
AND INDIRECT TAXES

... PETITIONER

(BY SRI. G SHIVADASS, SENIOR COUNSEL A/W
MS. SONAL SINGH &
SRI. RAVI RAGHAVAN, ADVOCATES)

AND:

1. STATE OF KARNATAKA
THROUGH ITS PRINCIPAL SECRETARY,
FINANCE DEPARTMENT,
VIDHANA SOUDHA,
BANGALORE-560 001.
2. THE COMMISSIONER OF COMMERCIAL
TAXES IN KARNATAKA
VANIJYA THERIGE KARYALAYA,
GANDHINAGAR,
BANGALORE-560 009.

3. THE DEPUTY COMMISSIONER OF
COMMERCIAL TAXES
(AUDIT)-1, SESHADRI BHAVAN,
DEWANS ROAD, MYSORE – 570 018.

... RESPONDENTS

(BY SRI. T K VEDAMURTHY, AGA)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLE
226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH
THE RE-ASSESSMENT ORDER DATED 18.08.2016 R/W
DEMAND NOTICE DATED 25.08.2016 PASSED UNDER
SEC.39(1) OF KVAT ACT BY R-3 VIDE ANNEX-A TO W.P. FOR
ASSESSMENT YEAR 2012-13 AND ETC.,

IN W.P. NOS. 25450/2016
& 26503-26513/2016:

BETWEEN:

M/S WIPRO ENTERPRISES (P) LTD
(FORMERLY PART OF M/S WIPRO LTD)
CONSUMER CARE AND LIGHTING DIVISION,
NO 105, HOOTAGALLI INDUSTRIAL AREA,
MYSORE - 570013
REPRESENTED BY ITS GPA HOLDER
(ALWYN PEREIRA SR EXEC ACCOUNTS)

...PETITIONER

(BY SRI. SHIVADASS G, SENIOR COUNSEL A/W
MISS. SONAL SINGH AND
SRI. RAVI RAGHAVAN,ADVOCATE)

AND:

1. STATE OF KARNATAKA
THROUGH ITS PRINCIPAL SECRETARY,
FINANCE DEPARTMENT,
VIDHANA SOUDHA,
BANGALORE-560 001.
2. THE COMMISSIONER OF COMMERCIAL
TAXES IN KARNATAKA
VANIJYA THERIGE KARYALAYA,
GANDHINAGAR,
BANGALORE-560 009.

3. THE DEPUTY COMMISSIONER OF
COMMERCIAL TAXES
(AUDIT)-1, SESHADRI BHAVAN,
DEWANS ROAD,
MYSORE – 570 018.

... RESPONDENTS

(BY SRI. T K VEDAMURTHY, AGA)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLE
226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH
THE RE-ASSESSMENT ORDER DATED 28.03.2016 R/W
DEMAND NOTICE DATED 29.03.2016 PASSED UNDER
SECTION 39(1) OF KVAT ACT BY R-3 VIDE ANNEX-A TO THE
W.P. FOR ASSESSMENT YEAR 2009-10 AND ETC.,

IN W.P. NOS. 38863/2016
& 48608-48618/2016:

BETWEEN:

M/S WIPRO ENTERPRISES (P) LTD
(FORMERLY PART OF M/S WIPRO LTD)
CONSUMER CARE AND LIGHTING DIVISION,
NO 105, HOOTAGALLI INDUSTRIAL AREA,
MYSORE - 570018
REPRESENTED BY ITS (GROUP MANAGER-
LEGAL & INDIRECT TAXES)

...PETITIONER

(BY SRI. SHIVADASS G, SENIOR COUNSEL A/W
MISS. SONAL SINGH AND
SRI. RAVI RAGHAVAN,ADVOCATE)

AND:

1. STATE OF KARNATAKA
THROUGH ITS PRINCIPAL SECRETARY,
FINANCE DEPARTMENT,
VIDHANA SOUDHA,
BANGALORE-560 001.
2. THE COMMISSIONER OF COMMERCIAL
TAXES IN KARNATAKA
VANIJYA THERIGE KARYALAYA,
GANDHINAGAR,
BANGALORE-560 009.

3. THE DEPUTY COMMISSIONER OF
COMMERCIAL TAXES
(AUDIT)-1, SESHADRI BHAVAN,
DEWANS ROAD,
MYSORE – 570 018.

... RESPONDENTS

(BY SRI. T K VEDAMURTHY, AGA)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLE
226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH
THE RE-ASSESSMENT ORDER DATED 07.06.2016 READ
WITH DEMAND NOTICE DATED 07.06.2016 PASSED UNDER
SECTION 39(1) OF KVAT ACT BY R-3 VIDE ANNEX-A TO THE
W.P. FOR ASSESSMENT YEAR 2011-12 AND ETC.,

**IN W.P. NOS. 51482-51483/2016
& 51543-51552/2016:**

BETWEEN:

CHAMUNDESHWARI BUILD TECH PVT. LTD.,
30TH KM, BANGALORE –MYSORE HIGHWAY,
BIDADI INDUSTRIAL AREA,
RAMNAGARAM TALUK – 562 109.
REPRESENTED HEREIN BY ITS
MANAGING DIRECTOR
MR. KIRAN KUMAR MEDA,
AGED ABOUT 42 YEARS.

...PETITIONER

(BY SRI. K P KUMAR, SENIOR COUNSEL A/W
SRI. VISHWASAI RAJENDRA, ADVOCATE)

AND:

THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES,
(AUDIT – 21), DVO-2,
'A' B;LOCK, 5TH FLOOR,
VTK-2, KORMANGALA,
BENGALURU – 47.

... RESPONDENT

(BY SRI. T K VEDAMURTHY, AGA)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED REASSESSMENT ORDER DATED 27.08.2016 (ANNEXURE-Q) PASSED BY THE RESPONDENT AS RECTIFIED VIDE THE ORDER 29.08.2016 (ANNEXURE-R) UNDER THE PROVISIONS OF THE KARNATAKA VALUE ADDED TAX ACT, 2003 FOR THE TAX PERIODS APRIL 2012 TO MARCH 2013 AND ETC.,

IN W.P. NO. 16458/2017:

BETWEEN:

M/S WIPRO ENTERPRISES (P) LTD
(FORMERLY PART OF M/S WIPRO LTD)
CONSUMER CARE AND LIGHTING DIVISION,
NO 105, HOOTAGALLI INDUSTRIAL AREA,
MYSORE – 570018. REPRESENTED BY
(NIKHIL CHANDRA GUPTA)
MANAGER INDIRECT-TAXATION.

...PETITIONER

(BY SRI. SHIVADASS G, SENIOR COUNSEL A/W
MISS. SONAL SINGH AND
SRI. RAVI RAGHAVAN,ADVOCATE)

AND:

1. STATE OF KARNATAKA
THROUGH ITS PRINCIPAL SECRETARY,
FINANCE DEPARTMENT,
VIDHANA SOUDHA,
BANGALORE-560 001.
2. THE COMMISSIONER OF COMMERCIAL
TAXES IN KARNATAKA
VANIJYA THERIGE KARYALAYA,
GANDHINAGAR,
BANGALORE-560 009.
3. THE DEPUTY COMMISSIONER OF
COMMERCIAL TAXES
(AUDIT)-1, SESHADRI BHAVAN,
DEWANS ROAD, MYSORE – 570 018.

... RESPONDENTS

(BY SRI. T K VEDAMURTHY, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE REASSESSMENT ORDER DATED 14.03.2017 READ WITH DEMAND NOTICE DATED 16.03.2017 PASSED UNDER

SECTION 39(1) OF KVAT ACT BY R-3 VIDE ANNEX-A TO THE W.P. FOR ASSESSMENT YEAR 2010-11 AND ETC.,

THESE PETITIONS COMING ON FOR *FINAL HEARING* THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

All these petitioners being the companies incorporated under the provisions of erstwhile Companies Act, 1956 are knocking at the doors of Writ Court for laying a challenge to the Orders of Assessment/Re-assessment made or sought to be made under the provisions of Sec.39 of the Karnataka Value Added Tax Act, 2003 (hereafter "2003 Act") mainly on the ground that their branches or units cannot be treated as separate "legal persons" and therefore supply of goods from one branch to another in the State does not amount to "sale" so as to attract the statutory levy.

2. After service of notice, the respondents having entered appearance through the learned Addl. Govt. Advocate resist the writ petitions contending that the branches/units of each of the petitioner-corporate bodies on being registered as separate dealers become legal entities independent of their parental corporate body and therefore the supply of goods from one unit to another

amounts to “sale” as extensively defined in the Act, attracting the levy; it is also contended that the writ petitions are misconceived when there is the statutory remedy of appeal availing to the petitioners.

3. Since substantially similar questions of law & facts arise from these cases, all they are taken up for final hearing together so that the same are disposed off by this common judgment, as suggested at the Bar. Having heard the learned counsel for the parties and having perused the petition papers, this Court frames the following questions of law for consideration:

“(i) whether the branches of same corporate body acquire independent “legal personality” on being separately registered as dealers for the purpose of the Act?

“(ii) whether supply of goods from one unit/branch to another of the very same company amounts to sale for the purpose of levy of tax under the Act?”

4. Both the above questions need to be answered in the negative for the following reasons:

(a) Sec.3 of the Act provides for levy of VAT on the ‘sale’ by a ‘dealer’ registered or liable to be registered under the Act; the word ‘dealer’ is defined in Sec.2(12) of the

dictionary clause of the Act; it is a “means and includes” definition, is true by virtue its expansive text; the principal part of the definition reads:

“ ‘Dealer’ means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes ...”;

nine categories of dealers that are enumerated in the inclusive part of the definition coupled with four Explanations do not even remotely suggest that the units or branches of a corporate body or of an unincorporated association would acquire legal personality, merely because they re permitted to file tax returns on the application of the management, as rightly contended by the learned Senior Advocates for the petitioners;

(b) in **‘Salmond on Jurisprudence’** Twelfth Edition, SWEET & MAXWELL 1966, at page 298 it is stated:

“...the prime case of a person is a human being, and personality would seem to entail the position of those characteristics belonging to particularly to mankind, i.e., the power of thought, speech and choice. To personify an object is to imagine it as endowed with such attributes; and it is on account of the possession of such qualities that we ascribe personality to such non-human beings as Gods, angels, devils and so forth... Since rights and

duties involve choice, therefore, they will naturally under any system of law be held to inhere primarily in those beings which enjoy the ability to choose, viz., human beings.. a person is any being whom the law regards as capable of rights or duties. Any being that is so capable is a person, whether a human being or not... Persons are the substances of which rights and duties are the attributes. It is only in this respect that persons possess juridical significance..."

The Apex Court in the historic decision in **Ayodhya Case** ie., **M.SIDDIQ (D) THR LRs. -VS- MAHANT SURESH DAS & ORS. 2020 (I) SCC page 1** - at paragraph 111 referring to Salmond observes as under:

"111. A legal person possesses a capability to bear interests, rights and duties. Salmond makes a crucial distinction between legal personality and the physical corpus on which legal personality is conferred. ...

Legal persons, being the arbitrary creations of the law, may be of as many kinds as the law pleases. ...

Legal personality is not human nature. Legal personality constitutes recognition by the law of an object or corpus as an embodiment of certain rights and duties. Rights and duties which are ordinarily conferred on natural persons are in select situations, conferred on inanimate objects or collectives, leading to the creation of an artificial legal person. An artificial legal person is a legal person to the extent the law recognizes the rights and duties ascribed to them, whether by statute or by judicial interpretation. Salmond presciently notes that the rights and duties conferred on artificial legal persons ultimately represent the interests and benefits of natural persons."

In the light of the above, it is bit difficult to accept the contention of the Revenue that the branches/units of the Corporate Dealer acquire juristic personality on merely being separately registered as Dealers, the purpose of such registration being confined to only the assessment; this accords with what the Division Bench of the Bombay High Court opined in **COMMISSIONER OF SALES TAX - vs- INDOKEM PVT. LTD., 1975 -35- STC 432 BOM**, the Court observed:

“ For obtaining his initial certificate of registration a dealer has to show that the combined turnover of his head office and its branch or branches exceeds the specified limit. Thereafter he has to make separate applications for registration in respect of each branch officer situate within the jurisdiction of different Sales Tax Officers. The branch office would have a registration certificate issued to it irrespective of the fact whether the turnover of sale or purchases effected by the branch office exceeds the specified limit or not, for the certificate of registration is issued to a branch office merely on the strength of the fact that the dealer’s combined turnover in respect of his head office and its branch office has exceeded the specified limit. A branch office, therefore, is not a registered dealer. In such cases what merely happens is that a dealer is issued several registration certificates in respect of his places of business. This does not bring into being as many dealers as there are registration certificates. The registered dealer remains only one. The other provisions are merely for administrative convenience...”

(c) the contention of the Revenue that once the units/branches of a corporate body on being registered as dealers would become juristic persons, cannot be sustained without straining the language of Sec.2(12) which defines the term 'Dealer'; sub-sec (6) of Sec.38 provides for registration of separate units of a dealer who happens to be a body corporate, having plural branches/units of business; the same reads as under:

*“(6) Notwithstanding anything contained in this Act, where a dealer is a body corporate and has more than one place of business, Commissioner may, subject to such conditions as may be prescribed and with the consent of the dealer, treat each of such places of business as a separate unit for the purposes of levy, assessment and collection of tax and thereupon all the provisions of this Act regarding registration, filing of returns, assessment and collection of tax, shall apply as if each of such places of business is a **separate unit**”.*

The contention of the learned counsel for the Revenue that the expression “separate unit” makes such units “separate dealers” for the purpose of levy of tax, is not supported by the above text of legal provision; if the Legislature intended that these separate units on being so registered shall become independent dealers, it would have employed the expression ‘separate dealers’ instead of ‘separate units’ in the sale provision;

(d) Rule 47 of Karnataka Value Added Tax Rules, 2005 which is promulgated to give effect to sub-section (6) of Sec.38 of the Act enables the officer authorised by the Commissioner to permit each of the business branches of a corporate dealer to file a separate return, is true; that enablement *per se* does not make such branches separate juristic persons; Mr.Shivadass, learned Sr. Advocate appearing for the dealer is justified in pointing out condition (i) prescribed in Rule 47 to the effect that treating of the branches of the business of a corporate dealer as separate units shall not reduce the tax liability in any way; Sec.38 (6) of the Act and Rule 47 are only intended to facilitate ease of business of the branches which the corporate dealer has in the same State; their text and context do not support the contention that they are intended to confer legal personality on such branches, on their registration; the State has such legislative power to attribute legal personality to an entity, under Part-XI of the Constitution of India, is beside the point as long as in exercise of such power, no provision is enacted to that effect in the Statute Book;

(e) the next contention of the Revenue that the supply of goods from one branch to another of the same corporate dealer amounts to sale and therefore the tax is leviable, does not have any legal substance; the term 'sale' is defined again in the dictionary clause of the Act; sec.2(29) employs a 'means & inclusive' definition, is true; the sale is expressed as a transaction with all its grammatical variation and cognate expressions wherein the transfer of the property in goods **'by one person to another'** takes place; even the inclusive part of the definition or the Explanation does not suggest that there can be a sale transaction between "one and oneself"; in other words, sale of goods being an accomplished contract necessarily involves minimum two persons inasmuch as one cannot contract with oneself; even the deeming provision in sub-section (3) of sec.2(29) does not militate against this view; similarly, the inclusive definition of 'person' given in the dictionary clause of the Karnataka General Clauses Act, 1899 does not support the contra contention of the Revenue;

(f) similar questions arising under the Tamil Nadu Value Added Tax Act, 2006 had fallen for the consideration of the Hon'ble Madras High Court in the case of

**NATIONAL TEXTILE CORPORATION LTD., -vs-
ASSISTANT COMMISSIONER, COIMBATORE, 2016- VIL**

-637-MAD; the decision therein supports the view taken by this Court; since the provisions of the Karnataka Act and the Tamil Nadu Act are in *pari materia* with each other, there is no reason or rhyme for this Court to tread a different path; paragraphs 2, 15 & 16 of the Madras decision are reproduced below:

“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.

*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.”*

In the above circumstances, these writ petitions succeed; a Writ of Certiorari issues quashing the impugned orders; all the monies deposited by the petitioners pursuant to interim orders shall be immediately refunded to them; the securities/bank guarantees furnished by the petitioners pursuant to interim orders shall stand rescinded/dissolved.

The jurisdictional respondents shall issue orders/clarifications as are required for giving effect to this judgment.

Costs made easy.

**Sd/-
JUDGE**

Snb/