



WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR JUSTICE C.KUMARAPPAN**

W.A(MD)Nos.208 to 215 of 2016

and

**C.M.P(MD)No.1011, 1012, 1013,1014,1015,1016,1018,1019,1020, 1021,
1022,1023,1024 and1025 of 2016 and 403,404,405,406, 407, 408,410,411 of
2024**

M/s.Udhayam Chemicals,
R.S.No.45/5B,Kazhuvankulam,
Pottapalayam Panchayat,
Kusavangundu Post,
Sivagangai District,
represented by its proprietrix
Tmt.U.Parameswari

... Appellant/Petitioner in W.A(MD)
No.208 of 2016

.Vs.

The Assistant Commissioner(CT),
Sivagangai Assessment Circle,
Sivagangai.

... Respondent/Respondent
in W.A(MD)No.208 of 2016

PRAYER in W.A(MD)No.208 of 2016: Writ Appeal filed under Clause 15 of
Letters Patent Act praying this Court to set aside the order passed by this Court in



WEB COPY W.P(MD)No.22152 of 2015, dated 10.12.2015.

For Appellant : Mr.N.Dilip Kumar
in all W.As'

For Respondent : Mr.D.Sachikumar
in all W.As' Addl.Govt. Pleader

COMMON JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
C.KUMARAPPAN,J.

These batch of Writ Appeals have been preferred by the Petitioner/appellant being aggrieved by the order passed by the Assistant Commissioner, Sivagangai.

2.The short point involved in these appeals is that:

The appellant, who claims to be the manufacturer of metal polishing soap purportedly to be used for polishing utensils is dealt with under Schedule-I Part B of the Tamil Nadu Value Added Tax Act, 2003(hereinafter called as "Act") in Entry 67 and 67-A which has been clarified by the Advance Ruling Committee



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that the metal polishing soap shall be construed as an abrasive used for polishing utensils. The appellant herein, who claims to have sold metal polishing soap to the buyers who are presumably a manufacturer of utensils had claimed that he is liable to pay tax at 4% for the product as per the Rule. However, when the concession was sought under Section 67 and subsequently under Section 67-A of the Act, the same was declined by the Assessing Authority on the ground that the product fall within the definition of 'agent', and the assessee is liable to pay tax at 12.5.%. Being aggrieved, the Petitioner/appellant had preferred batch of Writ Petitions, wherein, this Court while considering the submissions made by the appellant, observed that the dispute is against the order of assessment, therefore once the statute provides for an appeal within 30 days from the date of receipt of assessment order, the party should exhaust the appeal remedy provided under the statute. Hence, it held that the Petitioner/appellant has not opted to exercise the statutory remedy of appeal available to him, but had approached the constitutional Court invoking Article 226 of the Constitution of India. Further, the learned Single Judge regarding the grounds raised by the assessee challenging the assessment order held that the Court is not inclined to go into the facts which has to be decided by the appellate authority. It further held that



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without exhausting the statutory remedy of appeal, approaching the High Court invoking writ jurisdiction, cannot be entertained and in support of his decision, the learned Single Judge has taken into consideration the following judgments of the of the Honourable Supreme Court:

“1.(2010) 4 SCC 772 (Rajkumar Shivare .vs. Assistant Director, Directorate of Enforcement and another)

2..(2005) 2 MLJ 246 DB(M/sNivaram Pharma Private Limited, represented by its Director Sardarmal M.Chordia, Madras .vs. The Customs, Excise and Gold(Control) Appellate Tribunal, South Regional Bench, Madras and others)

3.(2010) SCC 110(United Bank of India .vs. Satyawari Tondon and others)

4.2010(259) ELT 37(Mad) DB(MJaritime Collector .vs. Madura Coats Limited)

5.(2010) 4 SCC 554(Rajeev Kumar and another .vs. Hemraj Singh Chauhan and others).”



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3. The learned Single Judge while dismissing the Writ Petitions, granted liberty to file appeal before the Appellate Authority within a period of four weeks from the date of receipt of a copy of the order.

4. Being aggrieved, the present Writ Appeals are filed.

5. The learned counsel for the appellant strenuously argued that the product namely, metal polishing soap squarely falls within Entry 67-A of Part-B in Schedule-I. The Advance Ruling also clearly held in favour of the assessee, whereas, the Department itself has earlier clarified to one Vaidyanathan of Coimbatore that there is no necessity to furnish certificate as contemplated under Rule 6(B) of the Act. While so, by wrongly applying the definition of 'agent' to the product manufactured by the appellant, the Assessing Authority has come to an erroneous conclusion that as per Section 2(15) of the Tamil Nadu Value Added Tax Act, 2006, the 'dealer' means a person who deals with product and includes a factor, a broker, a commission agent or arhati, a del credere agent or an auctioneer and further to say that metal polishing agent is a dealer.



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6. Pointing out the errors apparent in interpreting the provisions of law, the learned counsel for the appellant/assessee submitted that the assessment order per se suffers non-application of mind and the learned Single Judge had failed to look into the same. In addition to that, the learned counsel also submitted that the Department has already informed one of the dealer that the certificate is not required in respect of sale or purchase of metal polishing soap. Further it is clarified that the Assessing Officer has fixed 12.5% / 14.5% tax for the product sold, without any basis. There is no other entry in the schedule fixing the rate of tax specifically for metal polishing soap except adhesive which is mentioned in 67-A of the Schedule(1) and the rate of tax is earlier 4% and later increased to 5%. There is no power to the assessing authority under the Rule to impose 12.5% or 14.5% tax on metal polishing soap.

7. The learned Additional Government Pleader would submit that the Writ Petition was dismissed on the sole ground that the assessee has not opted to avail the statutory remedy of appeal by putting-forth the point which has now been canvassed before the appellate authority. Furthermore, the appellant /assessee had not furnished his certificate from the buyer that the product is sold as metal



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polishing soap used for the said purpose namely, polishing utensils. This Court though in agreement with the submission of the learned counsel for the appellant, insofar as the interpretation and the application of Section 2(15) of the Act

8.This Court finds that the argument by the appellant counsel that the Certificate is not required since metal polishing soap will not fall within the meaning of industrial input, is incorrect. All materials which are used in manufacturing a product should fall within any one of the category either as a raw material or as a material used for the industrial purpose. In this case, the said product 'metal polishing soap' has been wrongly construed as an agent by the Assessment Officer. But then, even if it is construed as an adhesive to polish utensils, this material is to be considered as an input. Therefore, Rule 6(3)(b) of the TamilNadu Valued Added Tax Act which reads as below:

6.Accounts:---(3)(a).....

“(b)Every registered dealer who is a manufacturer or producer and purchases industrial inputs to use them in manufacture of taxable goods shall issue a certificate to the seller containing the details of his Tax payer Identification Number, the details of goods purchased, details of goods manufactured and the name and address and Tax



WEB COPY *payer Identification Number of the seller.”(emphasis added)*

will squarely apply. Hence the assessee is liable to produce certificate given by the buyer which will disclose the purpose for which the product been purchased. Without Certificate, only based on the self assessment and claim made by the seller that the product has been used for the purpose of polishing utensils, concessional rate at 4%(later increased to 5%), cannot be granted.

9.Hence, while holding that the reason of the Assessment Officer in his order is not sustainable, but for not furnishing the certificate as required under Rule 6(3)(b) of the Act, this appeal fails. As a consequence, the order passed by the learned Single Judge permitting the assessee to agitate before the appellate authority is upheld. Accordingly, these Writ Appeals stand dismissed. There is no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

[G.J.,J.] [C.K.,J.]

05.02.2024



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NCS : Yes/No

Index : Yes / No

Internet : Yes / No

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To

The Assistant Commissioner(CT),
Sivagangai Assessment Circle,
Sivagangai.



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DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN,J.

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