IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.09.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.24130 to 24133 of 2004
and
W.P.M.P.Nos.29280 to 29283 of 2004

Southern Agrifurane Industries Limited,
Currently a Division of South India Corporation (Agencies) Ltd.,
Mundiyambakkam,
Villupuram 605 601. ..Petitioner in all Writ Petitions

/vs/

1.The Deputy Commissioner (CT),
Vellore Division,
Vellore.

2.The Commercial Tax Officer,
Villupuram I. ..Respondents in all Writ Petitions

Writ Petitions filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus quashing the proceedings of the first respondent in Rc.A2.9052/02 and 11286 to 11288/04 (1992-93), (1993-94) (1994-95) and (1996-97) respectively dated 6.7.2004, while directing the first respondent not to impose purchase tax under Section 7-A of the Tamil Nadu General Sales Tax Act, 1959 as directed by the Principal Commissioner and Commissioner of Commercial Taxes in Acts Cell.I/Dis.105980/88 dated 9.11.1989 and in D.Dis.Acts.Cell.II/52900/2000 dated 27.12.2000 until withdrawn in Acts Cell.II/6914/2002 dated 28.1.2002.

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For Petitioner : Mr. N.Prasad

For Respondents: Mr. K.Venkatesh
(In all W.Ps') Government Advocate

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COMMON ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents.

2. In these writ petitions, the petitioner is a Public limited Company incorporated under the provisions of the Indian Companies Act, 1956, and they are registered as a dealer on the file of the respondents under the provisions of the erstwhile Tamil Nadu General Sales Tax Act, 1959 and at present under the provisions of the Tamil Nadu Value Added Tax Act (TNVAT Act), 2006.

3. In all these writ petitions, the petitioner has challenged the proceedings of the first respondent, who is the revisional authority viz., the Deputy Commissioner (CT), Vellore Division, dated 06.07.2004, which was a revision of assessment in exercise of the powers conferred on the first respondent under Section 32 of the TNGST Act, 1959 for the assessment years 1992-93 to 1994-95 and 1996-97. So far as the assessment for the year 1995-96, the Assessing Officer viz., the second respondent had completed the assessment and passed an order on 10.04.2013. However, for the said year, there was no revision of assessment. As the petitioner was aggrieved by the order, which necessitated the petitioner to invoke the appeal remedy available under the Act and accordingly, an appeal was filed before the Appellate Deputy Commissioner (CT), Cuddalore, which was taken on file as AP.No.85/2013.

4. Among several contentions raised by the petitioner before the Appellate Deputy Commissioner(CT), one other contention was that the issue involved is squarely covered by the judgment of the Hon'ble Division Bench of this Court in the case of Mohan Breweries and Distilleries Limited v. Commercial Tax Officer, Porur Assessment Circle, Chennai and others [Vol.139 STC 2005 p.477] and it was contended that on identical facts, the Hon'ble Division Bench set aside the demands. Therefore, the petitioner pleaded that these petitions may be allowed.

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5 The Revenue resisted the contentions by contending that as against the decision in the case of Mohan Breweries and Distilleries Limited, the Revenue has preferred an appeal before the Hon'ble Supreme Court of India and the matter is now pending.

6. The Appellate Deputy Commissioner (CT), Cuddalore, after taking note of the submissions on either side and also after taking note of order passed in the case of Empee

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Distilleries Limited v. The Commercial Tax Officer, Anna Salai III Assessment Circle, Chennai-6 [W.P.No.36446 of 2005] dated 01.02.2007, wherein an identical issue, that is whether the purchase of empty bottles from unregistered dealers is taxable under Section 7-A of the Tamil Nadu General Sales Tax Act, 1959, with reference to the clarification of the commissioner that such tax not leviable for certain years, was sent back to the assessing officer for re-consideration, in the light of the decision of the Hon'ble Division Bench in the case of Mohan Breweries and Distilleries Limited.

7. The learned counsel appearing for the petitioner would contend that in the instant cases, the issue involved in these writ petitions are also identical to that of the issue, which was the subject matter of consideration by the appellate Deputy Commissioner(CT), Cuddalore in the assessee's own case for the assessment year 1995-96, therefore, prayed that the matter may be remanded back to the Assessing Officer to be considered along with the assessment for the year 1995-96 in terms of the direction issued by the appellate Deputy Commissioner(CT).

8. It is seen that the appellate Deputy Commissioner (CT) has remanded the matter to the assessing authority for reconsideration based on the outcome of the Special Leave petition filed against the decision in the case of Mohan Breweries and Distilleries Limited.

9. The learned Government Advocate appearing for the respondents pointed out that the impugned orders, in these cases, have been passed under Section 32 of TNGST Act, 1959, by which the Deputy Commissioner has invoked his special powers and in the event of matter being sent back to the assessing officer and await the decision of the Hon'ble Supreme Court of India, the assessee would plead that the case is barred by limitation. The revenue need not have any apprehension in this regard, in the light of the proviso to Section 32(2) of the Tamil Nadu General Sales Tax Act, 1959 which reads as follows:-

> "32.Special Powers of the Deputy Commissioner._
>
> (1).........
>
> (2) The Deputy Commissioner shall not initiate proceedings against any such order or proceeding referred to in sub-section (1), if-
>
> (a) the time for appeal against the order has not expired;

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(b) the order has been made the subject of an appeal to the Appellate Assistant Commissioner or the Appellate Deputy Commissioner or the Appellate Tribunal, or of a revision in the Special Tribunal; or

(c) more than five years have expired after the passing of the order:

Provided that if the order passed or proceeding recorded by the appropriate authority referred to in sub-section (1) involves an issue on which the Special Tribunal has given its decision adverse to the revenue in any other proceedings, and an appeal to the Supreme Court against the order of the Special Tribunal is pending, the period of time between the date of above said order of the Special Tribunal and the date of the order of the Supreme Court shall be excluded in computing the period referred to in clause (c).

(3)......

(4).......”

In terms of the above proviso, if the order passed by the appropriate authority under Sub-Section (1) involves an issue on which the Special Tribunal has given its decision adverse to the revenue in any other proceedings, and an appeal with the Supreme Court against the order of the Special Tribunal is pending, the period of time between the date of the said order of the Special Tribunal and the date of the order of the Supreme Court shall be excluded in computing the period of five years as contemplated under Section 32(2)(c) of the Act.

10. In all the instant cases, the subject matter in issue is covered by the order passed by the Hon'ble Division Bench and the matter is pending before the Hon'ble Supreme Court. Therefore, it would be appropriate for the Revenue to await the decision in the case of Mohan Breweries and Distilleries Limited, which is now pending before the Hon'ble Supreme Court.

11. Accordingly, these writ petitions are allowed and the impugned orders are set aside and the matters are remitted back to the assessing officer for fresh consideration, who shall await the decision of the appeal filed by the Revenue as against the judgment of the Hon'ble Division Bench of this Court in the case of Mohan Breweries and Distilleries Limited and in the

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event of action being initiated, the petitioner herein will not be entitled to plead limitation as against such action initiated by the Revenue in the light of the proviso to Section 32 (2) of the Act. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commissioner (CT),
Vellore Division,
Vellore.

2.The Commercial Tax Officer,
Villupuram I.

+1cc to the Special Government Pleader Sr.50636

W.P.Nos.24130 to 24133 of 2004

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