IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P. Nos. 15337 to 15341 of 2007

W.P. No. 15337 of 2007
M/s. Alsa Marine & Harvests Limited,
rep. by Eusufal Elias Saith,
Managing Director,
A-54, 11th Main Road,
Anna Nagar, Chennai - 40. ..Petitioner

Vs.

1. The Sales Tax Appellate Tribunal
(Main Bench),
City Civil Court Buildings,
Chennai - 104.

2. The Deputy Commercial Tax Officer,
Back Year I,
Amaindakarai Assessment Circle,
Chennai -108. ..Respondents

Prayer: Petitions under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records on the file of the 1st respondent in T.A. Nos.1057, 1058, 1160, 1059 and 1161/2002 respectively dated 02.08.2006, relating to the years 1995-96(CST), 1996-97(CST), 1997-98(CST), 1997-98 (CST), 1998-99(TNGST) respectively and quash the same as being invalid and illegal, and contrary to law.

For Petitioner :: Mr.V. Srikanth

For Respondents :: Mr.K. Venkatesh,
Govt. Advocate

COMMON ORDER

Heard Mr.V. Srikanth, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondents.

2. The petitioners have filed these writ petitions for issuance of a Writ of Certiorari to quash the orders of the 1st

respondent dated 02.08.2006. By the said order, the 1st respondent rejected the petitioner's appeal petitions and confirmed the levy of tax on the sale of REP licence.

3. The very same issue came up for consideration before the Division Bench of this Court in the case of M/s. Prakash Impex V. The State of Tamil Nadu represented by the Assistant Commissioner (CT), Periamet Assessment Circle in Tax Case Revision Nos. 158 to 162 of 2011, the only difference in the said case being that the assessee effected sale of DEPB licence in the course of trade and commerce locally. The Assessing Officer, in the said case, rejected the contention of the assessee and assessed the transaction to tax. The correctness of the said order of assessment came up for consideration before the Honourable Division Bench by way of aforesaid Tax Case Revisions and the revisions were dismissed by order dated 03.07.2013. The operative portion of the order reads as follows:

> “13. ....In order that an incidental activity would qualify itself to be brought under the definition of “business”, such incidental transaction must be in connection with the main activity, trade, commerce, manufacture, adventure or concern. Thus, while for all purpose or for substantive part of the definition “business”, there must be frequency, continuity and regularity in the transactions and the said activity would qualify to be termed under the definition of “business”, the incidental or ancillary activity to the main business does not call for such interpretation. By use of the expression “any transaction in connection with the business”, one can hold that the Act itself does not contemplate the frequency or regulairty or continuity of the transactions, as has been done in the substantive part in sub clause (1) of sub section (d) of Section 2 of the Act. In the circumstances, we do not think that this judgment, or the decision reported in [1967] 19 STC 1 (SC) (The State of Gujarat Vs. Raipur Manufacturing Co. Ltd.), which was rendered prior to the amendment of the Section, would be of any assistance to the assessee. So too the decision reported in [1973] 31 STC 426 (SC) (State of Tamil Nadu Vs. Burmah Shell Oil Storage and Distributing Co. of India Ltd. And another). In fact, the said decision went contra to the contention of the learned counsel, in view of the amendment brought to the definition of “business”. The decision reported in [1976] 38 STC 577 (S.C.) (Board of Revenue Vs. Ansari) does not, in any manner, advance the cause of the assessee, it being distinguishable on facts. So too the decision reported in [2002] 126 STC 288 (S.C.) (Commissioiner of Sales Tax Vs. Sai Publication Fund).

14. As far as the contention of the assessee that it does not purchase DEPB licence is concerned, going by the scheme of DEPB and the purpose and the background in which the same is issued and the value at which it is assigned to the petitioner, we do not find any justifiable ground to accept the case of the assessee that he is not a dealer dealing in DEPB licence. The issue raised that the assessee was carrying business in DEPB licence is raised only before this Court and not before the authorities below, where the question was whether DEPB licence would be liable to tax. In any event, it being a question of law, we reject the same.

15. In the result, the Tax Case Revision is dismissed and the Tribunal's order is upheld on the grounds stated above."

4. In the light of the above decision, the writ petitions are dismissed. No costs.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

1. The Sales Tax Appellate Tribunal
(Main Bench),
City Civil Court Buildings,
Chennai - 104.

2. The Deputy Commercial Tax Officer,
Back Year I,
Amaindakarai Assessment Circle,
Chennai -108.

+1cc to Venktraman, Advocate Sr.No.68496

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SDR 26.10.2017