IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2017

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THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.Nos.23644 to 23648 of 2003

W.P.No.23644 of 2003:
M/s. Malayagiri Essential Oil Distillers,
rep. By its Partner,
Virendra Kumar Tandon ...Petitioner in petitions

-Vs-

1.The District Forest Officer,
Salem Division,
Salem.

2.The Commercial Tax Officer,
Salem Division,
Salem.

3.The Special Commissioner and
Commissioner of Commercial Taxes,
Chepauk, Chennai 600 005. ...Respondents in petitions

Prayer: These Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent having reference C.No.11325/9/2002, C.No.11327/9/2002, C.No.11328/9/2001, C.No.11329/9/2002, C.NO.11326/9/2002 Respectively dated 20.06.2003 and quash the same and consequently direct the 1st and 2nd respondents to accept the 'C' Form and refund the amount of Rs.1,47,600/-, Rs.1,14,812/-, Rs.3,69,096/-, Rs.2,68880/-, Rs.2,04,384/- Respectively being the additional 4% Sales Tax paid under protest on the 10.000MT 9.000MT, 8.000MT, 5.000MT, 12.000MT Respectively of sandalwood purchased by the petitioner on 21.12.1999, 24.06.1999, 24.02.2000, 27.04.2000, 28.10.1999 Respectively

For Petitioner
in all the W.Ps. : Mrs.C.Uma

For Respondents
in all the W.Ps. : Mr.E.Manoharan, AGP (Forest)

COMMON ORDER

Since these batch of writ petitions are similar in nature as the relief sought for in each of the writ petitions are similar and the issue raised therein is also one and the same, all these writ petitions are decided by this common order.

2. For the purpose of disposal of the batch of cases, the facts narrated in the first writ petition i.e., W.P.No.23644 of 2003 is taken into account.

3.The petitioner claims that he is carrying on business of distillation and sale of sandalwood Oil in Kanpur, State of Uttar Pradesh. The petitioner is the registered dealer under the Central Sales Tax Act. The petitioner had participated in the auction conducted for sale of sandalwood. The first respondent had confirmed the sale of sandalwood in favour of the petitioner vide C.No.618/2000-8, dated 14.01.2000. As per the statement appended to the said sale confirmation order, the petitioner was directed to pay 8% sales tax for Rs.2,95,200/- on the total sale amount of 10.000Mt at Rs.36,90,000/-.

4.It is the further case of the petitioner that, since the petitioner is carrying on business of sale of sandalwood oil in Kanpur, State of Uttar Pradesh, he is not making any trade in Tamil Nadu and the petitioner had participated for the auction conducted by the first respondent and purchased sandalwood for the purpose of moving the same out of the State of Tamil Nadu to the State of Uttar Pradesh. The inter state movement arises as an incident of contract of sale.

5. Hence, the petitioner was liable to pay only 4% tax. However, the petitioner had already paid 8% tax as demanded by the first respondent, through the order of confirmation. The petitioner, at the time of making the tax, he only paid 4% sales tax and the remaining 4% as demanded by them, was paid only under protest. Therefore, the said 4% tax excessively paid by the petitioner shall be refunded by the respondent. Therefore, for the said relief, the petitioner had approached the respondent, to refund the said amount.

6. Further, by impugned order dated 20.06.2003, the District Forest Officer, first respondent, passed the impugned order stating that the Commercial Tax Officer concerned had

informed that the sale should be treated as local sale and therefore, the request of the petitioner for refund of excess sales tax was rejected.

7. Aggrieved over the said order dated 20.06.2003, passed by the first respondent, the present writ petition has been filed.

8. In all other writ petitions only in similar circumstances, similar impugned orders were passed by the first respondent, on the same day, i.e., 20.06.2003 respectively, rejecting the claim of refund of 4% excess tax said to have been paid by the petitioner.

9. I have heard Mrs.C.Uma, learned counsel for the petitioner and Mr.E.Manoharan, learned Additional Government Pleader (F) appearing for the respondents.

10. Mr.E.Manoharan, learned Additional Government Pleader relied upon the judgement of this Court made in W.P.Nos.568 to 570 of 2011, vide order dated 21.11.2012 in the matter of Surya Vinayaka Industries Ltd., vs. The District Forest Officer and another.

11. By relying upon the said judgement, the learned Additional Government Pleader would submit that the issue raised in these writ petitions is no more res integra as the sale has already been concluded by the said judgment which ofcourse followed by the Division Bench Judgment of this Court reported in 2005 140 STC 112 (Karnataka Soaps and Detergents Ltd., vs. District Forest Officer, Sathyamangalam).

12. In this regard, the learned Additional Government Pleader would rely upon the following paragraphs of the above said judgment which are extracted hereunder:

> "12. Merely because there is movement of goods from the State of Tamil Nadu to another State at the instance of the buyer, that would not take it out of the purview of the term sale within the State. There are certain rules which provide for transportation of goods in question after the sale. But that does not change the character of the sale within the State consequent to tender cum auction sale. The benefit which the petitioners may get out of the provisions of the Income Tax Act is totally alien to the payment of tax under the TNVAT Act, 2006, as the two enactments operated in different fields. There is no scope or provision for reading one

Act into the other, unless there is an express provision. Since the sale in this case was effected within the State of Tamil Nadu on the basis of the tender cum auction sale and the petitioners in all these cases have agreed to abide by the terms and conditions unconditionally, there cannot be any manner of doubt that the case squarely falls within the mischief of Section 3 of the TNVAT Act, 2006. Therefore, the demand for payment of value added tax under the TNVAT Act, 2006 is justified. There is no basis to justify the claim as inter-State sale. The said plea is specious and not as per law. The petitioners have not made out a case for the relief sought for both in law and on facts.

13. A similar issue was decided by a Division Bench of this Court in Karnataka Soaps and Detergents Ltd. v. District Forest Officer, Sathyamangalam and others, (2005) 140 STC 112, wherein it was held as under:

"11. It may be noted that the auction sale of sandalwood in the State of Tamil Nadu was done by the State of Tamil Nadu. The State Government would only be interested in getting the highest price for the sandalwood, and it would hardly be concerned with the question whether the sandalwood after the auction sale is consumed within the State of Tamil Nadu or goes to some other State. Hence, it cannot be said even by implication that the State of Tamil Nadu had entered into any covenant with the petitioner/appellant for transportation of the sandalwood to Karnataka after the sale. The movement of goods from Tamil Nadu to Karnataka can also not be said to be an incidence of the auction sale, rather the auction sale had nothing to do with the transport of the goods to Karnataka. In the auction sales (for all we know) there may have been bidders who wanted to purchase the sandalwood for use within the State of Tamil Nadu and not for transport outside the State. The State Government authorities would hardly be interested in the question whether the sandalwood after purchase in the auction sale is sent to Karnataka or U.P or some other State, or remains within Tamil Nadu. Hence, it cannot be said that the movement of goods to Karnataka was an incidence of the auction sale. In our opinion, such movement was wholly independent of the auction sale. Thus, it cannot be said that it was an inter-State sale.

....

13. In the present case, there is no conceivable legal link between the auction sale in Tamil Nadu and the movement of goods to Karnataka. The said movement was purely voluntary at the option of the petitioner and not under any legal obligation. Hence, the decision in South India Viscose Ltd. v. State of Tamil Nadu (1981) 48 STC 232 (SC): AIR 1981 SC 1604 is clearly distinguishable."

14. The decision of the Division Bench, cited supra, fortifies the view now taken by this Court. For the reasons stated supra and in view of the decision of the Division Bench of this Court, the plea of the petitioners that it is an inter-State sale has no legal basis and hence, the said contention is rejected. The challenge to levy of Tamil Nadu value added tax therefore fails.

In the result, these writ petitions are dismissed. No costs. Consequently, M.P.No.2 of 2011 (3 Petitions) and M.P.No.3 of 2011 (3 Petitions) are closed."

13. Learned Additional Government Pleader would also submit that as against this judgment referred above, an intra court appeal has also been filed and this appeal also went infavour of the department. However, Mrs.C.Uma, learned counsel for the petitioner would submit that the Division Bench of this Court concluded the issue against the petitioners and infavour of the department, against which Special Leave Petitions were filed before the Honourable Apex Court and according to the instructions, learned counsel would submit that, those SLPs. are still pending before the Honourable Apex Court.

14. However, it seems that no stay has been granted against the operation of the judgement of this Court referred to above. As has been rightly pointed out by the learned Additional Government Pleader appearing for the respondent, since the issue raised in this writ petition was already concluded following the decision of the Division Bench of this Court and as against the judgment of the learned Judge cited supra, this Court cannot

take a different view than the one as already concluded.

15. In view of the said judgement cited above as confirmed by the Division Bench and the said position since have not been controverted by either counsel, this Court is not inclined to interfere with the impugned order passed by the respondents, which are under challenge in these batch of writ petitions.

16. Accordingly, the impugned orders are sustained and hence, the writ petitions are liable to be dismissed. Therefore, the same are dismissed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To,
1.The District Forest Officer,
Salem Division, Salem.

2.The Commercial Tax Officer,
Salem Division, Salem.

3.The Special Commissioner and
Commissioner of Commercial Taxes,
Chepauk, Chennai 600 005.

+1cc to Mr. Advocate, S.R.No. 89407
+1cc to the Spl. Government Pleader(Forest), S.R.No. 89260

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TR(14/02/2018)