IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition Nos.41381 to 41383 of 2005
and WPMP Nos.44439 to 44441 of 2005

M/s.Essee Metal Containers Private Limited,
No.7, Industrial Estate,
Guindy, Chennai - 600 032. ...Petitioner in the above W.Ps

Vs

1.The Commercial Tax Officer,
Guindy Assessment Circle,
Chennai.

2.Union Territory of Pondicherry,
rep. By its Secretary (Finance),
Pondicherry.

3.The Assistant Commercial Tax Officer (IAC)
Pondicherry. ... Respondents in the above W.Ps

Prayer: PETITIONs filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records of the 1st respondent in TNGST/0900240/2000-01, CST/48723/2001-02 and TNGST/0900240/2001-02 and quash the order dated 30.11.2005 passed therein.

For Petitioner : Mr.R.L.Ramani, S.C.
in all wps For Mrs.Hema Muralikrishnan

For Respondents: Ms.G.Dhanamadhri, G.A.(T) - R1
in all wps Ms.G.D.Jearany, G.A.(Pondy)- R2&R3

COMMON ORDER

The petitioner is engaged in the manufacture and sale of metal caps (commonly known as Pilfer Proof Caps - P.P. Caps) and has two factories, one at Chennai and one at Pondicherry. The factory at Pondicherry is registered on the files of the Commercial Tax Assessing Authority at Pondicherry/R3 and also registered as a unit under the Central Excise Act, since the manufacturing activity with regard to P.P. caps is completed only at Pondicherry and clearances effected only therefrom. Raw materials are purchased by the factory at Pondicherry from various dealers.

2. According to the petitioner the raw materials are sent to the factory at Chennai and some of the processes involved in manufacturing take place at Chennai, such as Forming and Knurling. The semi finished P.P. caps are sent back to the factory at Pondicherry under cover of Form 57 F prescribed under the Central Excise Act and Form XX prescribed under the Tamil Nadu General Sales Tax Act, 1959 (in short 'TNGST Act') to evidence delivery. Upon receipt, the factory at Pondicherry finishes the semi finished goods by subjecting them to the process of wadding with EPE wads, wherein the final product emerges. The petitioner avers that the sales for the years in question, i.e., 2000-2001 and 2001-02 have taken place only at Pondicherry.

3. Returns were filed for the aforesaid periods, in terms of the Tamil Nadu General Sales Tax Act, 1959 (TNGST), Pondicherry General Sales Tax Act, 1967 (PGST) and Central Sales Tax Act, 1956 (CST). The petitioner, on the assertion that the entire sales had been occasioned only in Pondicherry, both domestic as well as inter state, offered its turnover from sales to tax under the PGST as well as under CST Acts. Orders of assessment were passed for the period 2000-01, both PGST and CST, on 26.08.2001 For the period 2001-02 a common order has been passed under PGST as well as CST. All four assessments as aforesaid have attained finality.

4. An inspection appears to have been conducted by the officials of the Enforcement Wing on 13.03.2002, pursuant to which, a show cause notice was issued to the petitioner proposing to bring to tax the sale of finished goods as suppressed sales in the hands of the petitioner unit located at Chennai. The Assessing Authority was of the view that there were no records available to evidence the movement of finished goods from Pondicherry to customers in Tamil Nadu and vice versa and in the absence of the petitioner establishing movement of semi-finished goods from Chennai to Pondicherry and onward for sale, both domestic as well as inter state, it was proposed that the sales, amounting to Rs.1,71,97,062/- (TNGST 2000-01), Rs.1,32,54,108/- (TNGST 2001-02) and Rs.6,91,949/- (CST 2001-02) should be brought to tax as suppressed turnover in the hands of the Chennai Unit.

5. The petitioner filed a detailed objection and the substance in summary have been stated by the Assessing Officer as follows:

'13. A notice was issued to them inviting their objections, if any, to the above proposals. The dealers, in their letter dated 17.12.2004, have objected to the proposals as follows:

1. They are having separate Excise registration for both Chennai and Pondicherry units and are paying excise duty at Pondicherry for the goods manufactured at Pondicherry;

2. They are having separate assessment under sales tax for Chennai and Pondicherry units;

3. Even though the Pondicherry units is an independent unit, it will come under one roof called Tvl.Essee Metal Containers Private Limited and their registered office is No.C-7, Industrial Estate, Guindy, Chennai - 32;

4.They are preparing all India Balance Sheet at Chennai and their income tax payments are at Chennai;

5.Because of all these, they were having the entire set of bills at the Chennai office to have a better follow up action and the inspecting officers failed to appreciate that the Pondicherry branch is also a part of the parent company at Chennai and by no stretch of imagination, it can be called as a sister concern;

6. They are enclosing documents which issued while transferring the material from Pondicherry to Chennai and from Chennai to Pondicherry to buyers;

7.Materials were issued to Chennai office by the Pondicherry branch for processing on job work basis for which we have issued Form 57-F which is a excise record at Pondicherry while transporting materials to Chennai;

8.They have issued a delivery note Form XX along with job work delivery challan for transport of goods from Cehnnai to Pondicherry and in the delivery challan, Form XX number is given as reference;

9.In certain instances, the Check Post officials or Roving Squad officials have affixed their seal or their signature in the Delivery Note;

10.In respect of sale of manufactured goods at Pondicherry, they have issued invoice-cum-delivery challan and in all their invoices, they have mentioned the lorry number and enclosed invoice No.328/11.2.2002 and Inv. No.335/15.2.2002 wherein the lorry number is mentioned and they are enclosing a separate file with all the relevant records to prove the movement of goods;

11.It is not known how it was assumed that they have effected these transactions at Chennai and that the sale invoices issued at Pondicherry wherein the details of Central Excise Duty and clearances time are mentioned and Xerox copy of Central Excise Challan is enclosed as a proof for repayment at Pondicherry;

12.Because of power tariff concessions, good infrastructure for manufacture, cheap labour and more distillery units at Pondicherry, they have opended their unit at Pondicherry;

13.If tax avoidance is out motive, they would have opened a fresh unit at Pondicherry wherein new units were allowed 5 years tax holiday for income tax, central excise and sales tax and their non-opening of fresh units shows that their intention is not to avoid tax but to go nearer to their customers;

14.The chellans in File marked B was issued for job work under Central Excise Act and they have correlated F4 challans from 101 to 115 and given the details for processing, etc. in their Annexure Statement (A) and they are enclosing detailed Annexure (B) statement which is mandatory under Central Excise;

15.As provided under the TNGST Act, all their transactions are covered by Delivery challan and Form XX;

16.The Pondicherry invoices are invoices-cum-delivery challan and they are enclosing copies of goods Vehicle record which proves as an evidence for the movement of goods and these points will go to prove that they have not violated any rule;

17.The Pondicherry unit effected inter-State sales to Tvl.Empee Distilleries, Chennai, Tv.Medopharm, Chennai and Tvl.Sivanandha Corporation, Chennai totaling to Rs.1,71,97,062/-;

18.Their total inter-State sales effected Pondicherry unit was Rs.2,05,55,676/- wherein as only Rs.1,71,97,062/- has been proposed in the notice and the turnover proposed in the notice is already assessed under the CST Act at Pondicherry;

19.The invoice-cum-delivery challan issued at Pondicherry do have the lorry number in which the materials were moved. As per the CST Act, when the movement of goods is proved between States, the CST sales is said to be effected.

Their materials were moved between Tamil Nadu and Pondicherry. When the turnover is assessed at Pondicherry, there is no necessity to assess the same at Chennai;

20.As they have proved the movement of goods and correlated the 57-F challans, they have requested dropping the proposal to revise the assessment. They have requested to drop the proposal to levy tax, surcharge and penalty.'

6. The sum and substance of the petitioners' objections were two fold: firstly, that the entire sales had been rightly brought to tax in the hands of the Pondicherry Unit, both under PGST as well as CST and secondly, that sufficient materials had been produced before the Assessing Authority at the relevant junctures in time to establish movement of goods from Chennai to Pondicherry for sale in the hands of the Pondicherry Unit. Specifically at points 6,7,8,9,10, 11, 12, 14 and 15, they have referred to materials and evidences that, according to them, would establish proper movement of goods and prove their transactions for sale from Pondicherry. I do not refer to the materials again, since they have already been extracted above.

7. The objections raised by the petitioner were however negated by the Assessing Authority who was of the view that no sufficient supporting documents had been established to prove movement of goods from Chennai to Pondicherry. Though he states in passing, at paragraph 15 of order dated 30.11.2005, (TNGST 2000-01) that the documents filed by them relate to alleged movement of goods from Pondicherry to Chennai and return of manufactured goods from Chennai to Pondicherry Unit, the subsequent observations reveal suspicion in his mind to the effect that the goods have been, in fact, not moved as documents appear to reveal but that movement has been projected merely to obtain the benefit of exemption available in the Union Territory of Pondicherry. His apprehension is thus to the effect that since the turnover from sales from the Pondicherry unit were covered by an exemption under PGST, the petitioner has diverted several of the transactions, though emanating only from the State of Tamil Nadu to make it appear as though the transactions had taken place from the Pondicherry unit merely to obtain the benefit of exemption.

8. Though it is certainly incumbent upon the Assessing Authority to carry the apprehension in his mind to a logical conclusion based on the materials available and furnished by the assessee, a perusal of the orders of assessment impugned before me indicate that he has not undertake a proper examination of the evidence stated to have been filed by the petitioner. He repeatedly states in paragraph 15 that no evidence have been produced to show movement of goods. However, there is no specific reference to the materials that are referred to in the

objections filed by the petitioner and extracted above. Though the Assessing Authority is at liberty to consider and reject the same, I am of the view that he ought to have referred to the evidence and then come to a conclusion in that regard.

9. In the light of the aforesaid, I am inclined to set aside these assessments and direct the petitioner/assessee to appear before the Assessing Authority on 21.10.2019 at 10.30 a.m. No further notice need be issued in this regard. After examining all evidences that are already on record as well as any that may be produced further by the petitioner, orders of assessment de novo shall be passed by the Assessing Authority ensuring that one to one nexus is drawn by him in regard to the specific transaction and the supporting documents produced/to be produced, to satisfy himself that the movement has in fact been occasioned from Chennai to Pondicherry for onward supply to customers domestically as well as inter state.

10. I am conscious of the position that any new orders of assessment that may be passed by the Assessing Authority now pursuant to the above direction (TNGST as well as CST) might militate against the PGST and CST assessments that have already attained finality. However, the order of assessments under PGST and CST are wholly non-speaking where the Assessing Authority indicates cursorily that the accounts of the dealers were called for and checked. There is nothing to indicate application of mind per se to the specific aspect of the matter as raised by the Commercial Tax Authorities at Chennai. Thus this exercise shall have to be carried out by the Assessing Authority de novo and in the interests of justice.

11. The Writ Petitions are allowed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

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To

1.The Commercial Tax Officer,
Guindy Assessment Circle,
Chennai.

2.The Secretary (Finance),
Union Territory of Pondicherry,
Pondicherry.

3.The Assistant Commercial Tax Officer (IAC)
Pondicherry.

+1cc to Mrs.Hema Muralikrishnan, Advocate SR.84144
+1cc to Government Pleader cum public prosecutor
for Pondicherry in SR.83570
+1cc to the Spl Government Pleader(Taxes), in SR.84146

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NMI(CO)
CB(17/10/2019)