IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.5103, 3949, 3952, 3956, 3958 & 3960 of 2019
and
W.M.P.Nos.5830, 4389, 4393, 4395, 4398 & 4399 of 2019

M/s.Sudirman Paper Private Ltd.,
(now amalgamated with Sripathi
Paper & Boards Pvt.Ltd.,)
Represented by its Authorized Representative
M.Elango
1443, 2nd Floor, India House,
Trichy Road,
Coimbatore – 641 018. ..Petitioner in all W.Ps

vs

The State Tax Officer
Gobichettipalayam. ..Respondent in all W.Ps

Prayer in W.P.No.5103 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in its proceeding vide CST 884684/2011-2012 and quash the order dated 30.08.2018 passed therein.

Prayer in W.P.No.3949 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in its proceeding vide CST 884684/2010-2011 and quash the order dated 30.08.2018 passed therein.

Prayer in W.P.No.3952 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in its proceeding vide CST 884684/2012-2013 and quash the order dated 31.08.2018 passed therein.

Prayer in W.P.No.3956 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in its proceeding vide TIN No:33043043396/2012-2013 and quash the order dated 28.12.2018 passed therein.

Prayer in W.P.No.3958 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in its proceeding vide TIN No:33043043396/2010-2011 and quash the order dated 04.01.2019 passed therein.

Prayer in W.P.No.3960 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondent in its proceeding vide TIN No:33043043396/2011-2012 and quash the order dated 04.01.2019 passed therein.

For Petitioner : Mr.B.Raveendran
(in all W.Ps)

For Respondent : Ms.G.Dhanamadhri
Government Advocate
(in all W.Ps)

C O M M O N   O R D E R

Mr.B.Raveendran, learned counsel on record for writ petitioner in all these six writ petitions and Ms.G.Dhanamadhri, learned Government Advocate on behalf of the sole respondent in all these six writ petitions are before this Court.

2. With consent of learned counsel on both sides, main writ petitions are taken up, heard out and are being disposed of.

3. This Court is informed without any disputation or disagreement that all these six writ petitions arise out of a common factual matrix and more importantly, this Court is informed that the central theme / core issue in all these six writ petitions is one and the same.

4. Short facts shorn of micro details / particulars are that a Private Limited company, which went by the name 'Sudirman Paper Private Limited' (hereinafter 'Transferor company' for the sake of brevity and clarity) was amalgamated with another company, which goes by the name 'Sripathi Paper and Boards Private Limited' (hereinafter 'Transferee company' for the sake of brevity and clarity) that Transferor and Transferee companies were amalgamated vide order dated 20.09.2012 made by Company Court in Madras High Court in Company Petition Nos.140 & 141 of 2012, that the amalgamation vide the order and scheme of amalgamation as approved by the High Court took retrospective effect on and from 01.04.2011, that this factum of amalgamation of Transferor and Transferee company was duly communicated to

the Commercial Tax officer concerned by letter dated 01.11.2012. Notwithstanding such intimation regarding amalgamation, revisional notices were issued to the Transferor company and ultimately revised assessment orders came to be passed in the name of the Transferor company.

5. With regard to the aforesaid revised assessment orders made in the name of the Transferor company, we are concerned with six revised assessment orders in these six writ petitions and details in this regard in a tabulated form is as follows:

Sl.No.	Writ Petition Number	Date	Assessment Year	Reference	TNVAT Act and CST Act under which revised assessment was passed
1	W.P.No.5103 of 2019	30.08.2018	2011-2012	CST 884684/2011-2012	CST
2	W.P.No.3949 of 2019	30.08.2018	2010-2011	CST 884684/2010-2011	CST
3.	W.P.No.3952 of 2019	31.08.2018	2012-2013	CST 884684/2012-2013	CST
4.	W.P.No.3956 of 2019	28.12.2018	2012-2013	TIN No:33043043396/2012-2013	TNVAT
5.	W.P.No.3958 of 2019	04.01.2019	2010-2011	TIN No:33043043396/2010-2011	TNVAT
6.	W.P.No.3960 of 2019	04.01.2019	2011-2012	TIN No:33043043396/2011-2012	TNVAT

'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' is being referred to as 'TNVAT Act' and 'Central Sales Tax Act, 1956' is being referred to as 'CST Act', likewise 'tax' under the two statutes are being referred to as 'TNVAT' and 'CST', both for the sake of brevity.

6. The aforesaid six revised assessment orders have been assailed in these six writ petitions and therefore, the

aforesaid six revised assessment orders shall hereinafter be referred to as 'impugned orders' in plural and 'impugned order' in singular.

7. Adverting to the aforementioned order dated 20.09.2012 made by the Company Court in Madras High Court in Company Petition Nos.140 & 141 of 2012 and the scheme of amalgamation which has been approved thereunder, learned counsel for writ petitioner pointed out that vide order of the Company Court, the Transferor Company, stood dissolved.

8. It was also pointed out that prior to amalgamation, assessment of Transferor company was done by Commercial Tax officer, Sathyamangalam, whereas impugned orders have been passed by the Tax officer, Gopichettipalayam.

9. In sum and substance, the sheetanchor submission of learned counsel for writ petitioner is that the impugned orders, which are revised assessment orders under respective statutes i.e., TNVAT Act and CST Act have been made by putting the dissolved Transferor company on notice i.e., revisional notices and the impugned orders themselves have been made in the name of the dissolved Transferor company (though factum of amalgamation has been informed to Department) and therefore, the same are liable to be interfered with in these writ petitions on hand.

10. In response to the aforesaid sheetanchor submission of the learned counsel for writ petitioner, learned Revenue counsel, adverting to the counter affidavit, submitted that the Transferor company was filing monthly returns, was paying tax dues for their sales within the State as well as outside the State up to the month of October 2012, therefore, the writ petitioner cannot now be heard to contend that the revisional notices and impugned orders have been sent to / made in the name of dissolved Transferor company.

11. This Court has carefully considered the submissions made on both sides. The submission made by learned Revenue counsel cannot be put against the writ petitioner for the simple reason that order of amalgamation itself came to be made only on 20.09.2012 though it took effect from 01.04.2011. Until the order of amalgamation is made and until the scheme of amalgamation is approved by this Court i.e., the Company Court in Madras High Court, the Transferor company could have filed returns and paid taxes in its name only. It is significant to note that even according to the counter affidavit filed by the Revenue, it has been stated with clarity and specificity that returns were filed and taxes were paid by the Transferor company up to October 2012. To be noted, date of order of amalgamation made by the Company Court is 20.09.2012.

12. The discussion thus far, leaves this Court with the considered view that it is necessary to have the impugned revised assessments redone and completed by giving an opportunity to the Transferee entity i.e., Transferee company to make objections and show cause or in other words, reasonable opportunity.

13. Learned counsel for writ petitioner, very fairly submitted that the impugned orders or in other words, each of the impugned order, shall be treated as revisional notices or in other words, show cause notices prior to revised assessment. This makes the task of resolving the lis simple and removes it of the complexities.

14. In the light of the narrative thus far, the following order is passed:

a) Impugned orders bearing reference CST 884684/2011-2012 dated 30.08.2018, CST 884684/2010-2011 dated 30.08.2018, CST 884684/2012-2013 dated 31.08.2018, TIN No:33043043396/2012-2013 dated 28.12.2018, TIN No:33043043396/2010-2011 dated 04.01.2019, TIN No:33043043396/2011-2012 dated 04.01.2019 shall now be treated as revisional notices i.e., show cause notices qua revised assessment for respective assessment years issued to the Transferee entity namely Sripathi Papers and Boards Private Limited.

b) The Transferee entity namely Sripathi Papers and Boards Private Limited shall file their reply / objections to the aforesaid revisional notices / show cause notices within four (4) weeks from the date of receipt of a copy of this order.

c) The respondent herein or the jurisdictional Assessing Officer as the case may be shall complete the exercise of revising assessment and passing revised assessment orders on the basis of replies / objections and in the aforesaid manner within 12 weeks therefrom.

d) Though obvious, it is made clear that the revised assessment orders which are being redone shall be done on the merits of the replies / objections of writ petitioner to the revisional notices and in accordance with law. The revised assessment orders so made, shall be communicated to the dealer now i.e., the Transferee entity namely Sripathi Paper and Boards Private Limited under due acknowledgement in accordance with the rules in this regard under TNVAT Act.

15. These six writ petitions are disposed of with the aforesaid directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

The State Tax Officer,
Gobichettipalayam.

+1cc to Mr.B.Raveendran, Advocate Sr.69470
+1cc to the Special Government Pleader Sr.69986

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and
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srg 18/09/2019