BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.06.2019
CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.[MD]No.16391 of 2015
and
M.P.[MD]Nos.1 & 2 of 2015

Velimalai Rubber Company Ltd.,
Rep. by its Director,
A.Kurian, (Velimalai Estate),
Velimalai Post Officer,
13/1-423 M.S.Road,
Parvathipuram, Nagercoil,
Kanyakumari District ... Petitioner

Vs.

1. The Principal Commissioner,
   And Commissioner of Commercial Taxes,
   Chepauk, Chennai - 600 009.

2. The Commercial Tax Officer,
   Thuckalay, Kanyakumari District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for records relating to the impugned order made by the second respondent in CST/506899/1989-90 dated 15.07.2015 and in CST/506899/1990-1991 dated 15.07.2015 and quash the same as illegal.

For Petitioner : Mr.M.Mahaboob Athiff
for M/S.Ajmal Associates
For Respondents : Mrs.J.Padmavathy Devi
Special Government Pleader

O R D E R

The petitioner assails orders of assessment for the period 1989-1990 and 1990-1991, both dated 15.07.2015, passed by the second respondent / Commercial Tax Officer, Tuckalay, Kanyakumari District, under the provisions of the Central Sales Tax Act, 1956 [In short 'Act'].

2. The petitioner is a Company engaged in sale of rubber. A consistent stand has been taken by the petitioner in its assessments to the effect that it is engaged in agricultural operations and the Raw Rubber / Latex obtained from the rubber trees growing in its estates is ‘agricultural produce’, the turnover from which would be exempt from tax.

3. Admittedly, assessments were framed in respect of the periods 1991-1992, 1992-1993, 1993-1994 and 1994-1995 involving the identical issues as in the present writ petitions. The assessments travelled through the hierarchy of appeals at the instance of the State and by an order dated 26.03.2003, the Sales Tax Appellate Tribunal (in short 'Tribunal') has passed a detailed order dismissing all the appeals.

4.The Tribunal, in coming to the aforesaid conclusion, has referred to a decision of the Kerala High Court in the case of *Bramore Rubber Estate Ltd., Vs. the State of Kerala* (78 STC 263), that held the identical issue against the assessee. The decision of the Kerala High Court was reversed by the Supreme Court in *Nilambur Rubber Co. Ltd., v. State of Kerala* (112 STC 654), remanding the matter to the file of the Tribunal for disposal afresh.

5.The Tribunal, in the petitioners' case, took into account all relevant facts as well as the judgments of the Supreme Court in the cases of *Deputy Commissioner of Agricultural Income-tax and Sales Tax Quilon v. Travancore Rubber and Tea Co.*, (20 STC 520) and *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon vs. Midland Rubber & Produce Co., Ltd.*, (25 STC 57) deciding the issue in favour of the assessee / dealers. The factual and legal position that now stands settled in the case of the petitioner before me is that the petitioner is engaged in the process of selling agricultural produce and such activity does not constitute business activity, the turnover from which would be liable to tax under the provisions of the Act.

6.The Revenue has not chosen to challenge the aforesaid factual and legal findings and the order of the Tribunal dated 26.03.2003 has attained finality.

7.However, in the assessments for the periods in question, the revenue appears to have adopted a contra stand holding that the Rubber/Latex would be 'goods' liable to be taxed under the provisions of the Act. It in the aforesaid circumstances that the present Writ Petitions have been filed on the ground that the impugned orders of assessment passed in respect of the periods 1989 - 1990 and 1990 - 1991 are inconsistent with the stand adopted by the Revenue for the subsequent years. I agree with the petitioner.

8.Having accepted the order of the Tribunal dated 26.03.2003, to the effect that the petitioners are engaged in agricultural operations and such operations would not come under the purview of business operations, the Department is estopped from adopting a contrary stand particularly when, admittedly, all relevant facts as well as legal position remain unchanged for the periods in question.

9.Inconsistency in matters of assessment, particularly in the face of identical factual and legal matrices, has been frowned upon by the Supreme Court and in the case of *Berger Paints India Ltd vs Commissioner of Income Tax, Calcutta* [AIR 2004 SC 1743] the position settled is that a consistent and uniform stand has to be taken by the Revenue in the matter of framing of assessments.

10.The counter affidavit filed by the Revenue only repeats the stand of the revenue on merits. I am however not inclined to consider the same as the very objections raised have been considered and rejected by the Tribunal in its order dated 26.03.2003 that stands accepted by the Department.

11.An objection has also been raised on the maintainability of the matter on the ground that the impugned order is only an assessment, which is amenable to statutory appeal. The objection on maintainability is also rejected for the reason that the impugned orders, admittedly, suffer from inconsistency in the stands taken by the revenue on identical facts and legal position in later and earlier years and is a fatal flaw as held by the Supreme Court in the case of Berger Paints (supra), liable to be addressed in terms of Article 226 of the Constitution of India.

12.The writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal Commissioner,
   And Commissioner of Commercial Taxes,
   Chepauk, Chennai - 600 009.

2. The Commercial Tax Officer,
   Thuckalay, Kanyakumari District.

+1 CC to M/s.AJMAL ASSOCIATETS, Advocate (SR-68372[F] dated 13/06/2019)
+1 CC to SPL GP (SR-68493[F] dated 13/06/2019)

W.P.[MD]No.16391 of 2015
12.06.2019

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