BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.10.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) Nos. 14253 to 14255 and 18117 and 18120 of 2019
and
WM.P.(MD).Nos.10699, 10700, 10701, 14565 and 14569 of 2019

Tvl.C.M.S.Ravi Agencies
rep. by its Proprietor C.M.S.Ravindran
No.218/252, East Masi Street,
Madurai-625 001. ... Petitioner in all W.Ps

vs.

1. The Commercial Tax Officer,
   Vengalakadai Street Assessment Circle,
   Madurai-20.

2. The Commissioner of Commercial Taxes,
   Chepauk, Chennai-5.

... Respondents in all W.Ps

PRAYER in W.P.(MD).No.14253 /2019:

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records on the file of the respondent in CST: 108939 / 2011-12 dated 29/04/2019 and quash the same as illegal , invalid and unlawful.

PRAYER in W.P.(MD).No.14254 /2019:

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records on the file of the second respondent in CST: 108939 / 2012-13 dated 29/04/2019 and quash the same as illegal, invalid and unlawful.

PRAYER in W.P.(MD).No.14255 /2019:

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records on the file of the Ist respondent in CST: 108939 / 2013-14 dated 29/04/2019 and quash the same as illegal, invalid and unlawful.

PRAYER in W.P.(MD).No.18117 /2019:

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records on the file of the respondent in CST: 108939 / 2017-18 dated 30/05/2019 and quash the same as illegal, invalid and unlawful.

PRAYER in W.P.(MD).No.18120 /2019:

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records on the file of the respondent in CST: 108939 / 2016-17 dated 30/05/2019 and quash the same as illegal, invalid and unlawful.

For Petitioner : Mr.A.Chandrasekaran
For Respondents : Mr.J.Gunaseelan Muthaiah
Additional Government Pleader
(in all W.Ps)

COMMON ORDER

Mr.J.Gunaseelan Muthaiah, learned Additional Government Pleader, takes notice on behalf of the respondent. By consent of both sides, the writ petitions itself are taken up for final disposal.

2.The petitioner in all the writ petitions is a dealer in Fried Gram and he filed his returns under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as TNVAT Act) and Central Sales Tax Act, 1956 (hereinafter referred as CST Act). The petitioner during the course of his business effect export sales and inter-State sales of Fried Gram. According to the petitioner, as per Entry 68 of Schedule 4 of the TNVAT Act, Fried Grams are exempted quantity and so, tax liability is nil. Therefore, for the local sales, he need not pay any tax. Sofar as inter-State sales is concerned, it is covered by CST Act. Section 8 of CST Act deals with rates of tax and sales, during the course of inter-State Trade or Commerce and the same reads as under:

> "8.The provisions of sub-section (6) and (7) shall not apply to any sale of goods made in the course of inter-State trade or commerce unless the dealer selling such goods furnishes to the prescribed authority referred to in sub-section (4) a declaration in the prescribed manner on the prescribed form obtained from the authority specified by the Central Government under sub-section (6), dully filled in and signed by the registered dealer to whom such goods are sold."

3.As per the above provision, the rates of taxes shall be at the rate applicable inside the appropriate State and Sales Tax Act of the State. Since the appropriate tax is nil, in view of sub-section 2 of Section 8 of CST Act, the inter-State sale of Fried Gram does not attract sales tax. However, without considering the said proviso, the Assessing Authority himself by way of proceedings in CST: 108939 / 2011-12 dated 29.04.2019, CST: 108939 / 2012-13 dated 29.04.2019, CST: 108939 / 2013-14 dated 29.04.2019, CST: 108939 / 2017-18 dated 30.05.2019 and CST: 108939 / 2016-17 dated 30.05.2019 has passed the impugned orders. The Assessing Authority has observed in paragraph No.12 of the impugned orders as follows:

> "12.Tax on Inter-State sales of fried gram:- They have stated that the fried gram is an exempted commodity falling under item 68 of part-8 of IV schedule to the VAT Act, 2006 which is a conditional one I.e, sales of such goods upto a total turn over of Rs.500 crores are exempt from tax under VAT Act, 2006, that as such, that because of the conditional exemption, the inter-state sales are also liable for exemption, that inter-state sales of chappal which are also coming under conditional clause are exempt from tax according to the 'instruction of the Commissioner of Commercial Taxes, Chennai in Acts Cell-II 13559 dated 15.06.2018 and hence, on the same analogy the interstate sales of fried gram has to be given exemption, that apart from the above, there are also other judgments which prohibit tax liability on inter-state sales of such commodity that are coming under conditional clause and hence, that the proposal to bring them to tax might be dropped.
>
> There is specific clarification of the Commissioner of Commercial Taxes, Chennai in 33848/2007 dated 28.06.2007 which has already been mentioned in this office notice under para 10, to the effect that inter-state sales of fried gram are liable for tax under CST Act, 1956 though it comes under the conditional clause. This has also been again confirmed by Commissioner of Commercial Taxes Act cell.No.46775/2007 VCC 1495 dated 21.02.2008.
>
> These instructions were issued by the Commissioner of Commercial Taxes after taking into consideration of the amendment made to sec.8 of CST Act, 1956, by the Fin.Act16/2007 w.e.f dated 01.04.2007. Hence, the proposals were confirmed."

4.It is pertinent to note that even though the petitioner has informed the Assessing Authority that he is doing inside as well as inter-State business and his turn over is below Rs.500 crores, the second respondent has issued the assessment orders against the petitioner.

5.It is repeatedly held by the Honourable Supreme Court in various judgments that *the sale or purchase of any goods is exempted from tax generally under Sales Tax Law of the appropriate State that* *the rate of tax payable is in respect of the turn over of goods under this Act.*

6. After amendment of Act in the year 2007, in the case of **State of Gujarat Vs. Reliance Industries Limited**, reported in ***[2017] 98 VST 111 (Guj)***, the High Court of Gujarat has categorically held as follows:-

> "The Term "rate of tax" used in the proviso and "rate applicable" in the main body of sub-section (1) of Section 8 must receive similar interpretation. Further, under sub-section (2) of section, it is provided that tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State under the sales tax law of that State. In contrast to sub-section (1), thus sub-section (2) does not provide for the lower of the two tax rates, two per cent, as prescribed for inter-State sales generally or the rate that may be prescribed by the local sales tax law. It prescribes only one rate of tax, namely, that which is applicable to the sale or purchase of goods in question within the State on the local sales. There is therefore, no warrant to interpret the expression "rate applicable to the sale or purchase of such goods" used in sub-section (1) of Section 8 as to mean the prescribed rate and not the rate which may be applicable taking into account the exemption totally or partially that may have been granted by the State Government.
>
> The expression "within the State of Gujarat" does not aim to collect tax on inter-State sale."

7.Relying on the judgment of **Bashir Oil Mills Vs Maharashtra Sales Tax Tribunal [1993] 90 STC 195 (Bom)**, the High Court of Gujarat has further held as under:

> "(i)that the Tribunal was right in applying entry 69 instead of entry 55 of the Schedule to the exemption notification issued under section 5(2) of the Gujarat Value Added Tax Act, 2003 to the inter-State sale of liquefied petroleum gas from the State to the buyers outside the State.
>
> (ii)That the Tribunal was right in holding that entry 69 made no difference even after its amendment with effect from October 3, 2008 by treating intra-State sale of liquefied petroleum gas for domestic use by the consumers of the State, and inter-State sale of

liquefied petroleum gas in bulk outside the State, on t he same footing.

iii)That by virtue of modification in entry 69 of the exemption notification pertaining to sales of liquefied petroleum gas for domestic use by addition of words" by the consumers of the State", with effect from October 3, 2008, the respondent-dealer was not liable to pay tax at the rate specified under section 8(1) of the Central Sales Tax Act on such sales."

8.In view of the same, the finding of the Assessing Authority that the inter-State sales of Fried Gram are liable for tax is not sustainable, in view of exemption granted under Entry 68 of TNVAT Act. In such circumstances, the impugned orders are liable to be set aside. Accordingly, they are set aside.

9.In the result, all the writ petitions are allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Commercial Tax Officer,
   Vengalakadai Street Assessment Circle,
   Madurai-20.

2. The Commissioner of Commercial Taxes,
   Chepauk, Chennai-5.

+1 CC to Mr.A.CHANDRASEKARAN, Advocate (SR-92671[F] dated 17/10/2019)
+1 CC to SPL GP (SR-92510[F] dated 17/10/2019)

W.P.(MD) No.14253 to 14255 and 18117 and 18120 of 2019
16.10.2019

vs
MK (07.11.2019) 5P 5C