(MD)No.1016 of 2004 stayed the demand notice. Later, in view of the

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.09.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
W.P(MD)Nos.20128, 20130 & 20131 of 2019
and
WMP(MD)Nos.16671, 16673 and 16674 of 2019

M/s.V.V.V & Sons Edible Oils Ltd.,
formerly known as M/s.V.V.Vanniaperumal & Sons,
rep.by its Director,
443, Main Bazaar,
Virudhunagar - 626 001. ... Petitioner in all W.Ps.

Vs.

The State Tax Officer - I,
Virudhunagar. ... Respondent in all W.Ps.

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records of the respondent in his proceedings in Entry Tax Assessment Nos.5720025/2002-03, 5720025/2003-04 and 5720025/2004-05 respectively and quash the notice dated 19.8.2019.

For Petitioner : Mr.R.L.Ramani
Senior Counsel for Mr.B.Raveendran
For Respondents : Mrs.J.Padmavathy Devi
Special Government Pleader
in all the writ petitions.

COMMON ORDER

Challenging the notice dated 19.8.2019 in Entry Tax Assessment Nos.5720025/2002-03, 5720025/2003-04 and 5720025/2004-05 respectively, these writ petitions have been filed.

2.By consent, the writ petitions are taken up for final disposal at the stage of admission itself.

3.The petitioner is a manufacturer of edible oil. In the course of manufacture of edible oil, the petitioner effects inter-state purchase of packing materials for packing edible oil. During assessment years 2002-2003, 2003-2004 and 2004-2005, the commodity 'vegetable oils of all kinds' were taxable at 4% under Entry 67 of Part B of the First Schedule to the TNGST Act. Accordingly, the petitioner has filed monthly returns under TNGST Act, reporting their total taxable turnover of edible oil, including the value of packing materials (pouches) and remitting the applicable taxes.

4.During 2001, the 'Entry tax on goods' was brought about to provide levy of tax on the entry of goods into local areas for consumption, use or sale therein. Section 3 of the Tamil Nadu Tax on Entry of Goods Act, 2001 [hereinafter referred to as 'Entry Tax Act] provided for levy of entry tax on the scheduled goods which are imported from any place outside the State of Tamil Nadu for consumption, use or sale therein. Further, as per Section 4(1) of the Entry Tax Act, an importer of any scheduled goods liable to pay entry tax, becomes liable to pay tax under TNGST Act and additional sales tax under the Tamil Nadu Additional Sales Tax Act, (TNAST Act), by virtue of sale of such scheduled goods, then, the liability under TNGST Act and TNAST Act shall be reduced to the extent of the tax paid under the Entry Tax Act.

5.The respondent, on 25.08.2004, issued notice, calling upon the petitioner to remit entry tax on the inter-state purchase of the packing materials for the assessment year 2002-2003, 2003-2004 and 2004-2005. The petitioner has challenged the levy of entry tax before this Court. This Court, by its order dated 08.09.2004 in W.P (MD)No.1016 of 2004 stayed the demand notice. Later, in view of the judgment of this Court in ***ITC Ltd., Vs. State of Tamil Nadu and another*** reported in ***7 VST 367,*** the batch of applications filed against levy of entry tax came to be allowed. However, on appeal by the respondent department, the Supreme Court has reversed the finding. Therefore, once again, here is a demand for payment of the entry tax by notice dated 19.08.2019. Challenging the same, the petitioner is before this Court.

6.In similar circumstances, in the case of ***Kasi and Sethu Vs. DCTO, Kumbakonam and another*** reported in ***2003 131 STC 73,*** a question was raised as to whether converse procedure can be adopted by setting off the sales tax paid towards the liability for entry tax. This Court vide order dated 31.12.2002, has given its finding as under:

> *"26. It may be that Section 4 of the Act provides for a converse case, but there is no rule or statutory provision, which bars the respondent from adjusting the amount already remitted towards general sales tax when import or the sales of vehicles in question are not liable to be assessed under The Tamil Nadu General Sales Tax and setting it off towards levy of entry tax. The levy, which is not authorised by law cannot be enforced nor the respondents could contend that they will keep the collection of tax, though they are not authorised to levy and collect. In the present case, levy and collection towards General Sales Tax*

Act, it is admitted, is not authorised as nine vehicles concerned are not liable for levy of tax under The Tamil Nadu General Sales Tax Act, 1959. Therefore, the said amount could very well be set off with respect to the entry tax payable in respect of the very same nine vehicles. It is not as if the petitioner has concealed or suppressed material facts, but has included the sales turnover in the return filed by the petitioner.

27. Instead of reopening the sales tax assessment of the concerned year, the respondents could very well pass a revised order of assessment under The Tamil Nadu General Sales Tax Act and pass consequential order under Tamil Nadu Act 13 of 1990, as the tax liability in respect of these nine vehicles is only under the Entry Tax. The respondents refusal to adopt such a course and procedure cannot be sustained."

7.In an identical issue, this Court in another decision reported in ***2019 - VIL - 448 - MAD [M/s.C.A.Motors Vs. The Commercial Tax Officer**, **Thiruvarur***, at paragraph Nos.27 to 31 has held as follows:

"27.There is one more vital distinction on facts between the above case and the one before me. In Kasi and Sethu (Supra), returns were filed both under the Entry Tax Act as well as under VAT Act for the bulk of the periods involved, except in regard to nine identified vehicles. There was thus, substantial compliance with the mandate of both statutes in that case - Entry tax as well as the VAT Acts. The petitioner before me is in rank violation of the Entry Tax Act and has not filed entry tax returns at all.

28.Thus, a claim for converse credit can certainly be accepted, seeing as the intention is for a unified levy and Section 4 is intended to 'reduce' tax liability by integration of the liabilities under both the entry tax and VAT statutes. However, such benefit is not absolute but conditional and only upon satisfaction of the circumstances as noted and discussed above. For the aforesaid reasons, I am unable to accept the prayer of the petitioner for an automatic and absolute application of Section 4 of the Entry Tax Act in the facts of this case.

29.The respondent has finalised the assessments without granting an opportunity of personal hearing and has also imposed penalty under Section 15(1) of the Entry Tax Act statutorily requires an opportunity of personal hearing.

30.In the aforesaid circumstances, I set aside the assessments for being redone by the Assessing Authority bearing in mind the above discussion and directions, as *culled from my appreciation of the provisions of Section 4 of the Entry Tax Act and the principles laid down by this Court in Kasi and Sethu (Supra), which decision I am told, has attained finality.*

31.The petitioner will file returns of entry tax in terms of Section 7 of the Entry Tax Act for the periods 2013-14, 2014-15 and 2015-16 on or before 23.09.2019. The respondent shall pass orders of assessment de novo on or before 31.10.2019 after hearing the petitioner, taking into account the returns to be filed, a proper application of Section 4 of the Entry Tax Act as above and in accordance with law. The levy of penalty shall also be considered de novo."

8.In so far as the present case is concerned, it is the case identical to the case decided by this Court in ***M/s.C.A.Motors***, cited above. In view of the findings given therein, I am of the considered view that the same direction can be given to the respondent to pass orders of assessment *de novo* in the case of the petitioners.

9.Accordingly, a direction is given to the petitioners to file returns of entry tax in terms of Section 7 of the Entry Tax Act for the periods 2002-2003, 2003-2004 and 2004-2005 within a period of three months from the date of receipt of a copy of this order. On filing such returns, the respondent shall pass orders of assessment *de novo* within a period of three months thereafter.

10.The writ petitions are disposed of with the above direction. No costs. Consequently, WMP(MD)Nos.16671, 16673 and 16674 of 2019 are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

mj

To

The State Tax Officer - I,
Virudhunagar.
+1 cc Mr.S.RAJA JEYA CHANDRA PAUL, ,Advocate, SR.No.87744
+1cc to M/s.Special Government Pleader,SR.No. 88710

W.P(MD)Nos.20128, 20130 & 20131 of 2019

KK/SAR/10.10.2019/4P-4C/