IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| Reserved on | 20.07.2020 |
| Pronounced on | 03.08.2020 |

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.14284 of 2012
and
M.P.No.1 of 2012

Devi Marine Food Export Pvt.Ltd.,
Rep., by its Director,
Abdul Razzak Ganj,
No.3/284, Muttukkadu Road,
Neelankarai,
Chennai-600 041. ...Petitioner

Vs

Assistant Commissioner (CT) (Addl.)
Thiruvanmiyur Assessment Circle,
No.98, A.V.Church Road,
Vannandurai,
Chennai-600 090. ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to call for the records on the files of the respondent herein in TIN No.33220920064/2007-08 dated 14.05.2012 and issue a Writ of Certiorari, or any other appropriate writ, quashing the same in so far as it relates to levy of tax on the turnover of Rs.4,07,82,823/- being tax on sale of Duty Entitlement Pass Book.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mrs.Dhana Madhri
Government Advocate



O R D E R

Today, the matter is called through video conferencing. By consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein is aggrieved against the re-opening of their assessment for the financial year 2007-08, insofar as it relates to levy of tax on a turnover of Rs.4,07,82,823/- being the tax on sale of Duty of Entitlement Pass Book (DEPB). In the notice issued by the respondent, it was claimed that since the relevant exports have been transacted at Chennai, the transfer of DEPB credit had to be in Tamil Nadu.

3. The petitioner had contended that the pass book was issued and delivered in Mumbai and the sale of delivery of the pass book was completed in Maharashtra, for which, Maharashtra VAT was paid under the MVAT Act. The respondent do not have the jurisdiction to levy tax on sale of DEPB.

4. The object of DEPB scheme is to neutralize the incidence of customs duty of the import content of the export product. The neutralization is granted by way of grant of duty credit against the export product, thereby enabling the exporter to claim set-off of the customs duty component at the time of import. The petitioner was granted the DEPB under the provisions of the MVAT Act at Mumbai and the sale and delivery of the pass book was completed in Maharashtra.

5. Section 2(33) of the Tamil Nadu Value Added Tax Act restricts levy of tax on sales that takes place outside the State of Tamil Nadu. The petitioner's right to claim set-off had originated by grant of the DEPB in the State of Maharashtra and delivered for sale in Maharashtra. The petitioner was also subjected to sales tax in the State of Maharashtra.

6. The issue with regard to respondent's right to levy tax for a sale that takes place outside the state of Tamil Nadu was the subject matter in Premier Marine Products vs. The Assistant Commissioner (CT), Chennai in W.P.No.8999 of 2012, whereby this Court, had answered the issue in favour of the assessee in the following manner:

> 9. To summarize my understanding, Explanation (V)(a)(i) provides that the sale or purchase of specified/ascertained goods shall be deemed to have taken place in the State if the goods are within the State at the time when the contract of sale or purchase is entered into. There being no dispute on the position that the goods in question, the DEPB, and

additionally, the seller as well as the buyer were all located in Bombay at the time when the transaction in question was finalised, the turnover from the transaction is liable to tax only in Maharashtra.

10. In Yasha Overseas V. Commissioner of Sales Tax and others ((2008) 17 VST 182) the Supreme Court (placitum 64 of the report) states that both DEPB and Replenishment licences (REP licence) are identical in nature and that both licences are exigible to sales tax. There is no dispute on this position.

11. The sole argument of the Revenue is that the petitioner is an exporter, exporting and importing from the Tuticorin Port. Clause 4.3.4 of the Foreign Trade Policy containing the DEPB Scheme makes it clear that the passbook is issued only in regard to a specified Port, which in this case is Tuticorin. This then is the only nexus which the State of Tamil Nadu has to the transaction in question and in my considered view, is insufficient to bring the transaction to tax in Tamil Nadu.

12. The Division Bench in the case of Lal Products (supra) was dealing with the sale of patent rights and the determination of situs of that transaction. The Bench notes as a finding of fact that the products in which the patent rights vested had been sold all over India. Reference is then made to a decision of the High Court of Delhi in the case of CUB PTY Limited V. UOI and Ors. ((2016) 388 ITR 617) on the question of location of intangible intellectual property rights. Extracting paragraph nos.19 and 20 thereof, the Bench agrees with the conclusion of the Delhi High Court to the effect that the situs of the owner of an intangible asset would be the

closest approximation of the situs of the asset itself. It is on the aforesaid reasoning that the situs of the patent rights that had been obtained by the assessee having its principal place of business in the State of Kerala, was held to be Kerala and the transaction in that case, an inter~state sale in terms of the provisions of the Central Sales Tax Act, 1956.

13. In the present case, we are concerned with a tangible asset, insofar as the right in connection with the export has been reduced to a passbook, constituting specified goods. The decision in Lal Products (supra) thus does not advance the case of the revenue. The categories of specific/ascertained goods and unascertained/ future goods are separate and distinct from tangible and intangible goods. The assets may be tangible or intangible on the one hand, also simultaneously being specific/unascertained on the other.

14. This Court in the case of P.S.Apparels V. Deputy Commercial Tax Officer ((1994) 94 STC 139), at paragraph 11 thereof, as well as the Supreme Court in the case of Tata Consultancy Services V. State of Andhra Pradesh ((2004) 137 STC 620) have considered scenarios where intangible goods, such as REP licence/DEPB licence and computer software have been reduced to fixed media, such as compact discs holding that once in the form of a physical commodity, the asset assumes the form of ascertained goods for the purpose of levy of sales tax. There is no clash in my mind in regard to the aforesaid categories and the argument of the Revenue in this regard is clearly misconceived.



7. The aforesaid order is self explanatory. As such, the respondent herein will not have jurisdiction to levy

tax on sale of a Duty Entitlement Pass Book for a sale and delivery, which was completed in Maharastra. As such, the levy of tax itself is liable to be quashed.

8. Accordingly, the impugned order dated 14.05.2012 is quashed, insofar as it relates to levy of tax on the turnover of Rs.4,07,82,823/- being tax on sale of Duty Entitlement Pass Book.

9. In the result, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

hvk

To

Assistant Commissioner (CT) (Addl.)
Thiruvanmiyur Assessment Circle,
No.98, A.V.Church Road,
Vannandurai,
Chennai-600 090.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.26013
+1cc to Special Government Pleader, S.R.No.25983

W.P.No14284 of 2012
and M.P.No.1 of 2012

LN(CO)
CB(18/08/2020)