IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.21219 of 2007

M/s. Alsa Marine & Harvests Limited,
represented by Eusufal Elias Saith,
Managing Director,
A-54, 11th Main Road,
Anna Nagar,Chennai-40 ... Petitioner

Vs.

1. The Sales Tax Appellate Tribunal,
(Additional Bench),
City Civil Court Buildings,
Chennai -104.
2. The Commercial Tax Officer,
Amaindakarai assessment Circle,
Chennai - 108. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the records on the file of the 1st respondent in T.A.No.1173 of 1999 dated 20.12.2006 relating to the year 1992-93 (TNGST), and quash the same as being invalid and illegal and contrary to law.

For Petitioner : Mr. V. Srikanth
For Respondent : R. Swarnavel
Govt. Advocate (Taxes)

O R D E R

[Order of the Court was made by DR.VINEET KOTHARI,J]

The learned counsel appearing for the petitioner/assessee had submitted that the issues involved in the present case is covered by a decision of the Honourable Supreme Court.

2. The assessee claims exemption on the sale of REP licence, contending that the same did not come within the definition of 'goods', therefore the sale was not taxable.

3. The relevant extract against the assessee, as found in paragraph 5 of the impugned order, reads as follows;

> '5. The appellant had claimed exemption for the disputed turnover of Rs.38,80,611/- on the ground that the appellants transaction with reference to the REP License is exempt from tax. The issue was finally settled by the Honourable Supreme Court of India in the case of Vikas Sales Corporation and Another vs. Commissioner of Comml. Taxes and Another reported in 102 STC 106. No proof was filed to allow the second sales exemption also. Therefore, in view of the decision rendered in the case of Vikas Sales Corporation reported in 102 STC 106, the liability with reference to the disputed turnover is confirmed and the order passed by the assessing authority as well as the first appellate authority hereby sustained.'

4. The Honourable Supreme Court in its detailed judgment delivered on 6th May 2008, in the case of Yasha Overseas vs Commissioner of Sales Tax and others reported in [2008] 17 VST 182 [SC], while discussing various precedents on the issue, held that both REP license and DEPB license amounted to 'goods' and therefore sales thereon, was taxable under the Sales Tax Law of the State. The relevant paragraph of the said judgment is quoted hereunder.

> '45. Thus on a detailed examination, we are unable to see how the decision in Sunrise can be said to alter the position in regard to the sale of REP licenses as held by the earlier decision in Vikas. It is noted above that the Constitution Bench in Sunrise firmly and expressly declined to go into the question whether REP licences (or DEPB which replaced REP licences) were `goods'. It is indeed true that the Constitution Bench in Sunrise did not approve the decision in Vikas insofar as it gave their free marketability as an additional reason to hold that REP licences were not actionable claim but `goods' properly so called. The Constitution Bench held that the assumption that actionable claims were not transferable for value was quite unfounded and the conclusion drawn on that basis was quite wrong. In paragraphs 39 and 40 of the decision, the Sunrise decision gave illustrations of a number of actionable claims which are transferable.
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> 46. But to our mind that does not in any way change the position insofar as REP licenses are concerned. While examining the three- Judge Bench decision in Vikas earlier in this judgment it is

seen that 26 the Court first came to hold that REP licence/exim scrip fell within the definition of goods quite independently. The court found and held that REP licenses had their own value; they were freely bought and sold in the market for their intrinsic value and for that reason alone those were goods. (See paragraph 29 of the decision in Vikas that is reproduced above). It was only after coming to the conclusion that the Court proceeded to examine the matter in light of the observations made in Anraj relating to lottery tickets and that too because the Karnataka and Madras High Courts had heavily relied upon the Anraj decision for holding that the sale of REP licences was exigible to sales tax. On a careful reading of the decision in Vikas it is apparent that it was the intrinsic value of REP licence that brought it within the definition of "goods".

47. At this stage we feel obliged to put in a caveat in regard to the observations made in Sunrise about marketability being a feature of distinction between `goods' proper and actionable claims. What was said in Vikas, as we understand it, was that the innate value of REP licence and its free transferability made it into a market commodity. The illustrations given in paragraphs 39 and 40 of the decision in Sunrise, namely, (i) a right on the fulfillment of certain conditions to call for delivery of goods mentioned in a contract, (ii) negotiable instruments, (iii) right to recover insurance money, (iv) a partner's right to sue for an account of a dissolved partnership, (v) the right to claim the benefit of a contract not coupled with any liability, (vi) a claim for arrears of rent and (vii) a right to the credit in a provident fund account are all indeed transferable for consideration but none of these is a market commodity. The holder of any of the above rights or claims may or may not be able to find a ready buyer at a given time; conversely a prospective buyer may not find any of the above rights or claims available for purchase by going to the market at any time. Contrary to this, REP licenses had always a market, that is to say, there were people willing to sell and others willing to buy REP licences at all times. Its innate value coupled with free transferability made REP licences into a market commodity and it was that aspect of the matter that Vikas referred to for holding that

REP licences could not be classified as actionable claims. Those were goods properly so- called having innate value and a ready market. The position becomes further clear by the completely contrasting findings in Sunrise (in regard to lottery tickets) and in Vikas (in regard to REP licences). In 28 Sunrise after giving illustrations of transferable actionable claims (paragraphs 39 and 40) paragraph 41 begins as :

"A lottery ticket has no value itself. It is a mere piece of paper."

48. On the contrary, in Vikas paragraph 29 begins as follows:

"The above provisions do establish that REP licences have their own value. They are bought and sold as such."

49. We thus have not the slightest doubt in our mind that the decision in Sunrise in no way affects the position insofar as REP licences are concerned and the legal position in regard to their sale is concluded by the decision in Vikas.

50. This takes us to the next question, whether what is said in Vikas in regard to REP licences would also apply in the case of DEPB. On behalf of the appellants it is strongly contended that DEPB has materially different features and hence, the decision in Vikas will have no application to it. Mr.A.K.Jain, learned counsel appearing for the appellants in Civil Appeal No.4075/2007 especially made elaborate arguments to bring out the points of distinction between REP licence and DEPB. But before proceeding to examine what is DEPB and how far it is different from REP licence it will be useful to take a look at the provisions of law under which the present cases arise and to establish their similarity with the statutory provisions that came up for consideration in Vikas and Sunrise. As noted above, the present appeals arise under the Delhi Sales Tax Act, 1975, the Kerala General Sales Tax Act, 1963 and the Bombay Sales Tax Act, 1959. '

5. In view of the settled legal position, now we do not find any merit in the present writ petition filed by the assessee and the same is accordingly dismissed. There shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msr

To

1. The Sales Tax Appellate Tribunal,
   (Additional Bench), City Civil Court Buildings,
   Chennai -104.

2. The Commercial Tax Officer,
   Amaindakarai assessment Circle, Chennai - 108.

+1cc to the SPL.Government Pleader, S.R.No.17942

W.P.No.21219 of 2007

RGN(CO)
nvi/29.05.2020