IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.5433 to 5435 of 2015
and
M.P.Nos.1, 1 & 1 of 2015

M/s.PepsiCo India Holdings Private Ltd.,
represented by its Sales Accounting Manager,
No.90, Anna Salai,
'Wellington Plaza' III Floor,
Chennai - 600 002. ... Petitioner in all W.Ps.

Vs.

1.The Deputy Commissioner (CT) - I,
Large Tax Payers Unit,
Chennai.

2.The Commercial Tax Officer,
Koyambedu Assessment Circle,
Chennai.

3.M/s.J.M.Bottling (P) Ltd.,
5/1, Numbai Post, Puliyambedu,
Vellappanchavadi,
Chennai - 600 077. ... Respondents in all W.Ps.

Common Prayer:- Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records of the first respondent in his proceedings in TNGST:0560541/1998-1999, TNGST:0560541/1999-2000 and TNGST:0560541/2000-2001 and to quash the assessment orders dated 31.05.2015 made therein.

For Petitioner : M/s.R.L.Ramani, Senior Counsel in all W.Ps.

For Respondents: Mr.Mohd. Shaffiq, S.G.P. (T). in all W.Ps.

COMMON ORDER

By this common order all the three Writ Petitions are being disposed.

2. In these Writ Petitions, the petitioner has challenged three separate orders dated 31.01.2015 passed by the 1st respondent for the Assessment Years 1998-1999, 1999-2000 and 2000-2001. The proceedings have a chequered history stating from 2010 onwards before this Court.

3. The petitioner had entered into a manufacturing agreement dated 23.09.1998 with 3rd respondent M/s.J.M.Bottling Private Limited (manufacturer), which is now a defunct company. The said agreement was in force fully during the periods in dispute. Under the agreement M/s.J.M.Bottling Private Limited was required to manufacture and supply soft drinks as per the formula of the petitioner.

4. The said manufacturer was required to source the material/inputs from designated suppliers identified by the petitioner. Entire output from the bottling plant of the said manufacturer was to be supplied only to the petitioner. The manufacture of was not permitted to manufacture any other product in the plant.

5. It appears that the petitioner not only paid for the inputs/raw material required for manufacturing purpose though the purchase orders were placed by the said manufacturer. There are indications that the petitioner also supplied some of the raw materials directly to said manufacturer.

6. For the Assessment Years mentioned above, the said manufacturer had filed returns under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred as TNGST Act). These assessments were also finalised vide following Assessment Orders:-

Sl.No	Assessment Order Date	Assessment Year
1	30.03.2000	1998-1999
2	31.12.2002	1999-2000
3	25.04.2003	2000-2001

7. On 14.02.2001, the petitioner's place of business was inspected by the officers attached to the Enforcement Wing and details regarding the transaction with the said manufacturer were called for.

8. Several documents were seized and thereafter D3 proposals were forwarded by the Enforcement Wing pursuant to which proposals were made to re-open the assessments to deny the benefit of 2nd sale exemption claimed by the petitioner on the soft drink manufactured by the said manufacturer and supplied to the petitioner and its distributors, which were marketed and sold by the petitioner.

9. Under these circumstances, the petitioner was issued with the pre-assessment notices which culminated in Assessment Orders.

10. For the Assessment Year 1998-1999, an assessment order dated 18.03.2004 was passed against which the petitioner preferred an appeal before the Deputy Appellate Commissioner in A.P.No.16 of 2004.

11. The appeal filed by the petitioner for the Assessment Year 1998-1999 against the assessment order 18.03.2004 vide A.P.No.16 of 2004, which was disposed by the Deputy Commissioner (CT) Appeal vide order dated 31.03.2006.

12. The said appeal was allowed by way of remand and directed the Assessing Office to pass a fresh order in the light of the decision of the Court in Tvl.Shanmuga Traders, 114 STC 1. The operative portion of the order dated 18.03.2004 of the Decputy Commissioner (CT) Appeal reads as follows:-

> 14) The contention has been perused with connected records. Perusal of the assessment file T/ 98-99 of TVl.J.M .Bottlings (P) Ltd., at pages 88 , 49 & 75, the interleaved Balance Sheet show that Tvl.J. M.Bottlings P) Ltd., had made an outright purchases of raw materials from local registered dealers including against Form XVII at Rs.154.32 lakhs and from interstate at Rs.2,63,52,529/-, total Rs.4,17,84,418/- and reflected in their Balance Sheet as an outright purchased by them including purchases against C forms, obtained and issued to the interstate supplier by Tvl.J.M.Bottlings (P) Ltd., pages 61, 71, 73 and 75. This was also vouched by the Assessing Authority and the same is reflected in the trading account results (Pages 51, 61, 59 & 65). Perusal of the assessment file of the

appellant reveals that the appellant had effected purchases of Rs.5,34,90,625/- as detailed out at pages 87 to 111 of T/98-99 Vol.II which the information was culled out as a result of inspection only. The total purchase culled out as a result of inspection works out to Rs.5,80,81,936/- which were purchased by the appellant only and not by Tvl.J.M.Bottlings (P) Ltd. This was also detailed out in the D3 proposal (at P.27 of T/98-99 Vol.II of the appellant) stating that the appellant had purchased raw materials and transferred to Tvl.J.M.Bottlings (P) Ltd. But the appellant contended that the purchase for Rs.5,80,81,936/- is one and the same of the figures reflected in the Balance Sheet as at pages 51, 61, 59 and 65 of Tvl. J.M.Bottlings (P) Ltd., T/98-99. This contention is not acceptable, because the purcahse reflected in the trading accout of Tvl. J.M.Bottlings (P) Ltd.,, are the outright purchases of Tvl. J.M.Bottlings (P) Ltd., and this Rs.4,17,84,418/- cannot be equated to that of Rs.5,80,81,936/- Jotting on Rs.5,80,81,936/- reflected in the account of the appellant and the figure reflected in the account of Tvl. J.M.Bottlings (P) Ltd., at Rs.4,17,84,418/- are distinctly different and vary each other. Therefore, the appellant's contention that the purchase of raw materials at Rs.5,80,81,936/- reflected in the appellant account and the purchase of raw material at Rs.4,18,84,418/- reflected in the Balance Sheet of Tvl. J.M.Bottlings (P) Ltd., is not one and the same but different items. Therefore, the revenue;s apprehension that the assessment on the value of raw material at Rs.5,80,81,936/- as escaping is found not without merit. Therefore, the assessment on the value of finished goods at Rs.14,72,57,748/- got out of the raw material purchased by the appellant valued at Rs.5,80,81,936/- transferred/ sent to Tvl. J.M.Bottlings (P) Ltd., for manufacture of " Pepsi" products apprehended and got assessed by the revenue in the impugned revision assessment order dated 18.3.04 mader u/s. 16(2) is found sustainable in principles enjoined in taxation clynamics.

15) However, the learned Authorised Representative and appellant still apprehend that the purchases at Rs.5,80,81,936/- is the same that reflected in the Balance Sheet of Tvl. J.M.Bottlings (P) Ltd., and the learned Authorised Representative strongly stressed this point and rebutted the assessment. Therefore, the matter needs to be reverified thoroughly to clear the clouds. Hence, the assessment on Rs.14,72,57,748/- @ 11% is set aside and the matter remitted back to the revenue with direction to cause thorough verification of purchase bills/journals of the dated interleaved at pages 51, 59, 61 & 65 of Tvl. J.M.Bottlings (P) Ltd., T/98-99 and at pages 49, 45, 47, 51, 73 to 75, 88, 87 to 111 of T/98-99 of the appellant Vol.II and to ensure the purchases stand dichotomous division into two or one and the same. If the purchases stand dichotomous division in two, then the escapement of assessment on Rs.14,72,57,748/- is distinct and stand apart from the second sale claimed by the appellant and under such circumstances, the impugned assessment order restricting the claim of second sale is found arbitrary absurd and liable to be set aside. In this perspective as well the impugned assessment order is set aside and the matter remitted back to the revenue to cause thorough verification. At the outset it must be ensured whether the purchases of Rs.5,80,81,936/- as reflected in T/98-99 Vol.II at pages 55 to 51; 73 to 75 and 87 to 111 of the appellant and the purchases at Rs.4,17,84,418/- as reflected at pages 51, 59, 61 & 65 of Tvl. J.M.Bottlings (P) Ltd., T/98-99 are one and the same or different. If they are different the restriction of second sale claim by the Rs.14,72,57,748/- may not suit to the requirement of taxation dynamics. With the above observation, the assessment on Rs.14,72,57,748/- is set aside and the matter remitted back to the revenue to cause thorough verification including the purchases / purchase journal / accounts by Tvl. J.M.Bottlings (P) Ltd., T/98-99.

In fine, the appeal stands remanded.

13. As against the assessment orders dated 17.09.2010 and 04.10.2010, the petitioner filed W.P.Nos.24489 & 24490 of 2010. By an order dated 09.11.2010, both the Writ Petitions were disposed with the observation that assessment orders were not passed immediately after the receipt of the objections filed by the petitioner even though petitioner had filed its objections as early as 2004 and had appeared before the Asst. Commissioner on 27.04.2004.

14. It appears that prior to passing of the orders the petitioner had also sought time on 09.09.2010 but the orders dated 17.09.2010 came to be passed by the Deputy Commissioner (CT), Fast Track Assessment Circle – 1, Chennai 600 006. The petitioner was thereafter directed to file their objections within a period of three weeks from the date of receipt of the said order and the respondent was directed to pass orders in accordance with law.

15. The petitioner also filed a reply/objection dated 30.11.2010 pursuant to the aforesaid directions of this Court. It appears a personal hearing also was held on 14.06.2011, on which date the petitioner undertook to file written submissions before the said officer. The petitioner also filed a reply on 21.06.2011.

16. As far as assessment order dated 04.10.2010 for the Assessment Year 200-2001 was concerned, the 1st respondent herein issued a notice dated 05.09.2011 to revise the rate of tax in accordance with the returns as reported by the dealer. The petitioner was given an opportunity to reply within 15 days.

17. Under these circumstances, two separate assessment orders came to be passed by the 1st respondent for the two Assessment Years as follows:-

Assessment Years	Date	Tax (Rs.)
1999-2000	10.11.2011	1,73,12,329/-
2000-2001	10.11.2011	2,24,46,889/-

18. The petitioner therefore once again approach this Count in W.P.Nos.28582 & 28583 of 2011 and challenged the above assessment orders By an order dated 27.11.2012, both the Writ Petitions were disposed on the ground that for the Assessment Year 1998-1999, no assessment orders have been passed pursuant to the remand order dated 31.03.2006 of the Deputy Commissioner.

19. The Court therefore concluded that the petitioner was justified in asking for passing fresh order along with the pending remand proceedings for the Assessment Year 1998-1999.

The plea of the petitioner regarding Section 12(c) of the TNGST Act, 1959 was left open to be decided by the 1st respondent.

20. Thereafter, three notices were issued to the petitioner on 26.11.2014 fixing the personal hearing on 15.12.2014. It appears that the petitioner appeared for personal hearing and also filed their detailed objections dated 27.01.2015 separately for the respective Assessment Years. Pursuant to these, the impugned orders were passed.

21. Details of the pre-assessment notices and the respective assessment orders passed by the 1st respondent Deputy Commissioner (CT) are detailed as under:-

Assessment Year	Notice / Pre-Assessment Notice	Re-Assessment Order date	Remark
1998-1999	16.08.2001	18.03.2004	A.P.No.16/2004 filed by the Petitioner (Assessee). Disposed by way of renewed order dated 31.03.2006.
	26.11.2014	31.01.2015 #	Impugned in W.P.No.5433 of 2015 of the petitioner (Assessee).
1999-2000	13.08.2010	17.09.2010	W.P.No.24489 of 2010 . The said Writ Petition was disposed on 09.11.2010.
	05.09.2011	10.11.2011	W.P.No.28582 of 2011 filed by the petitioner (Assessee). The said Writ Petition was disposed on 27.11.2012.
	26.11.2014	31.01.2015 #	Impugned in W.P.No.5434 of 2015 of the petitioner (Assessee).
2000-2001	30.01.2004		
	13.08.2010	04.10.2010	W.P.No.24490 of 2010. The said Writ Petition was disposed on 09.11.2010.
	05.09.2011	10.11.2011	W.P.No.28583 of 2011 filed by the petitioner (Assessee). The said Writ Petition was disposed on 27.11.2012.
	26.11.2014	31.01.2015 #	W.P.No.5435 of 2015 of the petitioner (Assessee)

Impugned Notices in the present respective Writ Petitions.

22. The petitioner has now come by way of Writ Petitions for the third time and has challenged the three separate impugned assessment orders dated 31.01.2015, which have been passed for the respective Assessment Year on the ground that the demand has been confirmed on account of the failure of the petitioner to produce the books of accounts of the manufacturer J.M.Bottling Private Limited.

23. The learned counsel for the petitioner relied on the following decisions:-

i. Maninderjit Singh Bitta Vs. Union of India and Others, (2012) 1 SCC 273.
ii. Shanmuga Traders and Others vs. State of T.N and Others, order dated 22.04.1998, passed by the Hon'ble Supreme Court in C.A.Nos.4976-4979 of 1994.
iii. Ashok Leyland Ltd. Vs. Union of India and Others (and other appeals), 1997 105 STC 152 (SC).
iv. Commissioner of Income Tax, West Bengal III Vs. Balkrishna Malhotra, order dated 28.07.1971, passed by the Hon'ble Supreme Court in Civil Appeal No.1391 of 1967.
v. M/s.Vinayagar Spining Mills Vs. The Commercial Tax Officer, order dated 04.10.2019, passed by this Court in W.P.Nos.12166 & 12167 of 2007 and batch of cases.
vi. S.Sivabalan Vs. Deputy Superintendent of Police and Others, order dated 19.01.2011, passed by this Court in W.P.No.20174 of 2010.

24. The learned counsel for the respondents relied on the decision of the Hon'ble Supreme Court in M/s. Vanguard Rolling Shutters and Steel Works Vs. The Commissioner of Sales Tax, (1977) 2 SCC 250 to state that the said manufacturer was a mere job worker of the petitioner and therefore, the petitioner was liable to pay tax and had wrongly claimed 2nd sale exemption.

25. On the other hand, the learned counsel for the petitioner submits that the assessment orders cannot be based on purported failure on the part of the petitioner to furnish the documents and accounts of the manufacturer.

26. I have considered the arguments advanced by the learned senior counsel for the petitioner and the learned Special Government Pleader (T) appearing for the respondents. I have also perused the impugned orders passed by the 1st respondent. Indeed, the petitioner has delayed the proceedings by repeatedly filing writ petitions before this Court.

27. The petitioner had filed Writ Petitions for the Assessment Years 1999-2000 and 2000-2001 in the year 2010 and thereafter in 2011. These two writ proceedings delayed the passing of the orders. W.P.Nos.5434 and 5435 of 2015 are the 3rd Writ Petition for the Assessment Year 1999-2000 and 2000-2001.

28. Unfortunately, the respondent while passing the impugned assessment orders dated 31.01.2005 for these three Assessment Years has not passed a speaking order. The petitioner has also not produced records regarding purchase bills and sale bills and the details of the said M/s.J.M.Bottling Private Limited. The said company closed down its business. It is not clear whether it was engaged in business after the petitioner did not renew the agreement with it.

29. As per the information gathered by the officers of the Commercial Tax Department, the factory of M/s.J.M.Bottling Private Limited was filled with water up to knee level and that no records were available in the said factory business premises. Thus, the said company has also become defunct company. If those documents were required, it was open for the officers to track the details from the promoters of the said company and obtained same.

30. It was also open for the Commercial Tax Department to obtain the records from the Income Tax Department and the Excise Department. However, no steps have taken by the Commercial Tax Department in this regard. Instead, the 1st respondent has blamed the petitioner and passed the impugned orders.

31. No doubt the petitioner had tired out the Commercial Tax Department by repeatedly filing Writ Petitions in the year 2010 and 2011 and strained the assessment proceedings. Unfortunately, orders were also passed by this Court on two occasions on 09.11.2010 and on 27.11.2012 in W.P.Nos.24489 & 24490 of 2010 and W.P.Nos.28582 & 28583 of 2011 by setting aside the assessment orders for the Assessment Years 1999-2000 and 2000-2001.

32. It is also not clear as to why the 1st respondent had not taken steps for the Assessment Year 1998-99 even though the Appellate Assistant Commissioner had remanded the case back in March 2006 by an order dated 31.03.2006. It has to be assumed that orders passed in the four Writ Petitions referred to supra have contributed to the delay in passing of the impugned order W.P.No.5433 of 2015 as well.

33. From the narration of facts in the order passed by the Appellate Asst. Commissioner on 31.03.2006 for the Assessment Year 1998-99, I am of the view that the Department has prima facie made of a case that the said M/s.J.M.Bottling Private

Limited which has been referred to as the manufacturer in this order was indeed a job worker of the petitioner. There are sufficient indications that the petitioner had directly sourced some of the raw materials and supplied to M/s.J.M.Bottling Private Limited. There are also indications that petitioner paid for the raw materials for which purchase orders were placed by the said M/s.J.M.Bottling Private Limited as is evident from a reading of the dated 31.03.2006 of the Appellate Asst. Commissioner, which has been extracted above. It is for this precise reason the case was remanded back for proper verification. If orders were passed immediately, the petitioner would have produced the documents at that point of time.

34. The petitioner has filed objection on 27.01.2015. There is no discussion in the impugned orders. The petitioner has also made an alternative claim that if this was a sale, then the sale transaction should construed as "works contract" within the meaning of extended definition of sale recognised by the 46th Amendment to the Constitution of India.

35. In fact that the petitioner was unable to produce the documents of the said M/s.J.M.Bottling Private Limited cannot be a ground to straightaway complete the assessment by holding that the petitioner has not substantiated the 2nd sale. It would require proper examination. Thus, the impugned orders are liable to be quashed and the cases would require fresh consideration by the 1st respondent.

36. In case, the 1st respondent comes to an ultimate conclusion that indeed there was no sale between the petitioner and the said M/s.J.M.Bottling Private Limited, the incidence of tax borne by the petitioner for the three Assessment Years totalling to an amount of Rs.3,16,28,835/- [93,16,780 + 1,26,31,838 + 96,80,217] shall be allowed to be set off subject to verification while passing fresh orders. The 1st respondent shall also examine the submission of the petitioner regarding the applicability of Section 12-C of the TNGST Act, 1959 as amended by Act.No.37 of 2006.

37. Since the impugned orders are nonspeaking in nature, I am constrained to quash them and remit the cases back to the 1st respondent to pass speaking orders in accordance with law within a period of three months from the date of receipt of a copy of this order.

38. The present Writ Petitions stand disposed with the above observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Commissioner (CT) - I,
Large Tax Payers Unit, Chennai.

2.The Commercial Tax Officer,
Koyambedu Assessment Circle, Chennai.

W.P.Nos.5433 to 5435 of 2015
and M.P.Nos.1, 1 & 1 of 2015

srg 30/07/2020