

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.01.2020

Pronounced on : 28.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.42190,42191, 42311 & 42312 of 2016
and W.M.P.Nos.36094, 36095, 36218 & 36219 of 2016

M/s.Deegee Orchards Private Limited,
represented by its Managing Director,
Dee Gee House, Rallies Road,
Amaravathi 444 601 ... Petitioner in all W.Ps.

vs.

The Commercial Tax Officer,
Trichy Road Assessment Circle,
Coimbatore 18. ... Respondent in all W.Ps.

Prayer in all W.Ps.: Writ Petitions filed under Article 226 of the Constitution of India to issue a writ of Certiorari, to call for the records of the respondent in CST No.965463/2010-11, CST No.965463/2011-12, CST No.965462/2010-11 and CST No.965462/2011-12 and quash the assessment order dated 30.06.2016.

For Petitioner: Mr.R.L.Ramani
Sr. Counsel for
M/s.Raveendran (in both W.Ps.)

For Respondent : M/s.G.Dhana Madhri G.A.(T)
(In both W.Ps.)

C O M M O N O R D E R

By this common order, both the writ petitions are being disposed.

2. The petitioner has challenged the impugned orders passed by the respondent on 30.06.2016 for the assessment years 2010-11 and 2011-12 under the Central Sales Tax Act, 1956. The impugned proceeding came to be initiated pursuant to an inspection

carried out by the Enforcement Wing of the respondent Commercial Tax Department on 26.09.2011 & 27.09.2011 at the premises of the petitioner.

3. Documents were seized and statements were recorded from the petitioner's staff on 27.09.2011. Thereafter, VSI-3 proposals were issued to the petitioner on 16.04.2012. It was concluded that the petitioner had prepared records as if the goods were transported to Tamil Nadu from Maharashtra and sold within the State of Tamil Nadu as exempted sales.

4. It was also concluded that the petitioner after selling the goods either directly in other State or within the State of Maharashtra, created records to show as if the goods were sold in Tamil Nadu.

5. Since for the sales made in Tamil Nadu, complete address of the purchasers together with their TIN were not reflected in the bills/invoices raised by the petitioner and since the amount had allegedly received the payment in cash, the petitioner was held liable to tax under the provisions of the Central Sales Tax Act, 1916.

6. It was further stated that the petitioner submitted Form F issued by the respondent to the dealers in Maharashtra for transfer of goods to Tamil Nadu but there was no proof that the goods were received by the petitioner in Tamil Nadu and sold locally and therefore it can be construed that the petitioner had effected local sale in Tamil Nadu after alleged branch transfer from Maharashtra and therefore the petitioner was liable to tax.

7. The petitioner was thereafter issued with two show-cause notices dated 31.07.2012 for the respective assessment year. The petitioner was called upon the respondent to pay tax at the rate of 4% during the respective assessment years amounting to Rs.1,27,62,373 and Rs.50,37,659/- respectively.

8. The petitioner challenged the respective notices before this Court in W.P.No.26068-69 of 2012. By an order dated 11.10.2012, both the writ petitions were disposed with the direction to the respondents to issue/furnish the documents seized during inspection of the business premises of the petitioner on 26.09.2011 and on 27.09.2011 as well as the relevant information relating to D-3 proposals within a period of 15 days from the date of receipt of copy of the order.

9. Thereafter, the petitioner replied to the respective notices which have culminated in the impugned orders. By the impugned orders, the respondent has confirmed the proposals in the respective notices dated 31.07.2012. Operative portion of the respective orders are identical except for the turnover and the tax net demanded:-

The Objections filed by the dealers had been carefully considered and met out as follows:

The dealer had admitted the fact of stopping the business activities only after the exemption limit was reduced to Rs.5 crores from R.500 crores per year w.e.f.12.07.2011 under entry 65 of the part B of IV of schedule to the TNVAT 2006. Their total sales turnover was above Rs.5 crores every year. If they continued the business, after the amendment date was 12.07.2011 they become liable to pay tax automatically. In order to avoid the tax liability they stopped the business activities at Coimbatore cleverly.

2. During the time of inspection, the inspecting officers pointed certain material defects which can be utilised only during the time of revision of assessment by the assessing officers alone who is competent to assess the dealer. The inspecting officers are not competent to pass assessment order and did not act as assessing officers. The assessing officer had not only relied on the inspection reports, but also relied other materials defect on records.

3. Point i and ii of the page 2 of the notice under the Head of " Conclusion" speaks about the method of suppression adopted by the dealer so as to enable them for claiming exemption on the sale of refined soya oil. Point iv of page 3 of the notice under the Head of " Conclusion" speaks about the issuance of form " F" declarations for branch transfer of goods to Tamil Nadu. From the above, it was clear that there were no

contradictory conclusions arrived at by the assessing officers with reference to the inspection reports of the Enforcement Wing Officers. Application of mind by the assessing officer to the material on record at the time of assessment is a justifiable ground for reassessment as per the decision reported in 95 STC.208(AP). If the estimate made by the Assessing Officer was a bonafide estimate and was based on a national basis, the fact there was no good proof in support of that estimate was immaterial prima facie. The Assessing Officer was the best judge of the situation, not anyone else's as per the decision reported in 32 STC.77(SC). The satisfaction arrived at by the Assessing Officers was based on existence of reasons to belief. Belief may be subjective, but reasons have to be objectivities as per the decision reported in 30 VST 356.

4. Whatever may be the quantum of the sales turnover the dealer was bound to mention, the name and full address of the buyer with TIN No. Of the buyer as per Rule 6 (4) of the TNVAT Rule 2007. From the verification of the annexure II of the monthly returns in form I. It was found that the sale value was over than 3 lakhs per sale invoice. They did not furnish any TIN of the buyer even in a single sale invoice. All sale invoices throughout the year were issued without mentioning TIN of the buyers. It was also unbelievable one that all sales were effected on case sale basis. Even a single buyer had come forward to issue cheque or DD for the sales effected by them. In order to prevent cross examination and verification of the sales effected by them. In order to prevent cross examination and verification of the sales with the buyers account and returns through website. The dealer claimed exemption on the sales of refined soya oil upto Rs.500 crores. They were expected to mention TIN of the buyer both in the sales bill and annexure II of the monthly returns. Here, genuineness of the claim of exemption by them was doubtful and suspicious. If the

dealers had actually sold the refined soya oil locally they might have mentioned the buyers full and correct address with TIN of all the buyers, further the dealer did not produce any xerox copies of the sale invoice in support of claim of exemption.

Some Example of sale invoice as per Annexure II of the monthly returns.

★

Party Name	Invoice No	Date	Sale Value	TIN No.
Sai Balaji Oil Mill	558	03.02.2011	767250	-
Ramesh Traders	554	04.02.2011	717250	-
Ayyappa Traders	569	05.02.2011	717500	-
Harian Enterprise	574	08.02.2011	710500	-
Krishna Oil Mill	576	08.02.2011	663000	-
Sai Balaji Oil Mill	588	10.02.2011	607500	-
Harian Enterprise	589	10.02.2011	405000	-
Harian Enterprise	611	21.02.2011	502500	-
SundarRajan	596	14.02.2011	710500	-
Rajinikant Enterprise	612	22.02.2011	754500	-
Naresh Agency	619	24.02.2011	707000	-
Rameshwari Traders	620	25.02.2011	604800	-
Arunkumar Industries	622	26.02.2011	502500	-
Jayesh Trade Link	623	26.02.2011	502500	-

(* Table 1)

The above were only some samples of sale invoices issued by the dealer. Fate and destiny of all the sale bills issued during the years were one and the same as seen from the annexure II of the monthly returns filed for the year 2011-12. Most of the dealer are usually in the habit of making payments against their purchases by way of cheque or DD when the sales transaction runs to lakh of rupees. When enjoying the benefits of exemption, the dealer is bound to discharge the burden of proof by producing the following records as per Section 17 of the TNVAT/Act 2006.

1. Producing all sale bills for verification.
2. Sale invoice are to be issued as per Rule 6(4) of the TNVAT Rules 2007
3. Mode of payment details for the sales effected.
4. Storage facilities for refined soya oil.
5. Stock account as per form " H" as per Rule 6(3) (a) even in the case of trader.

Since the dealer failed to discharge the burden of proof, the claim of exemption would be disallowed and treated as inter-state sales in the absence of valid proof for movement of goods from other states of Tamil Nadu through all the Check Posts.

Further, the dealer reported sales turnover of refined Soya Oil during the year 2011-12 upto July 2011 as detailed below under TNVAT 2006.

*

Month	Sales Turnover Reported
April 2011	Rs.3,97,78,893
May 2011	Rs.3,57,60,656
June 2011	Rs. 4,31,87,940
July 2011	Rs. 72,14,000
From August 2011 to March 2012	Rs. ----
Total	Rs.12,59,41,489

(* Table 2)

From the above sales turnover reported upto July 11, it is clearly come to know that the dealer had knowingly stopped the reporting of sales turnover under TNVAT 06 after the amendment of the exemption limit on the sale of oil from Rs.500 crores to Rs.crores per year, as per the Act No.30 of 2011 w.e.f.12.7.11. In order to avoid tax liability, the dealer stopped their clandestine transaction w.e.f.12.7.11. If they continued their business after 12.7.11, they became liable to pay tax automatically since the total turnover would had reached above Rs.5 crore per year after

12.7.11.

In the above circumstance and fore going discussions I over rule all their contention as untenable and confirm the proposals and pass order as detailed below:

*

Total and taxable interstate sales turnover determined treating the interstate sales not covered by 'C' Forms @ 4%	Rs.3,190,59,343.00
Tax due	Rs.1,27,62,373.00
Paid	Rs.20,00,000.00
Balance	Rs.1,07,62,373.00

(* Table 3)

Subsequent order passed by the respondent dated 30.06.2016 in CST No.965463/2011-12 for the assessment year 2011-12 which reads as under :

*

Party Name	Invoice No	Date	Sale Value	TIN No.
Radhika Agency	83	02.05.2011	492000	-
Rajkamal Traders	85	02.05.2011	640250	-
Harrin Enterprise	89	04.05.2011	732750	-
Sundar Enterprise	95	06.05.2011	685300	-
Mayuri Oil Mill	97	06.05.2011	635700	-
Nivetha Oil Mill	99	07.05.2011	784000	-
Renuka Oil Traders	102	07.05.2011	637000	-
R.Shailesh Kumar Oil	104	09.05.2011	686000	-
Mohini Oil Agency	114	11.05.2011	585000	-
Sarweshwara Oil Agency	116	11.05.2011	732000	-

(* Table 1)

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*

Total and taxable interstate sales turnover determined treating the interstate sales not covered by 'C' Forms @ 4%	Rs.12,59,41,489.00
Tax due	Rs. 50,37,659.00

Total and taxable interstate sales turnover determined treating the interstate sales not covered by 'C' Forms @ 4%	Rs.12,59,41,489.00
Paid	Rs. _____
Balance	Rs. 50,37,659.00

(* Table 2)

*

Penalty Due	Rs.76,56,488.00
Tax due	Rs. 50,37,659.00
Paid	Rs. _____
Balance	Rs. 75,56,488.00

(* Table 3)

10. Challenging these orders, the petitioner has filed these two writ petitions.

11. I have heard the learned senior counsel for the petitioner and the learned Government Advocate for the respondent.

12. It is submitted that the petitioner was engaged in sale of refined soya oil the State of Tamil Nadu. It is the contention of the petitioner that during the period in dispute upto 12.7.2011, the dealers engaged in sale of refined oil were exempt from tax up to a turnover of Rs.500 crores as per Entry No. 65 to Part B of the IV Schedule to the Tamil Nadu VAT Act, 2006.

Total and taxable interstate sales turnover determined treating the interstate sales not covered by 'C' Forms @ 4%	Rs.12,59,41,489.00
Tax due	Rs. 50,37,659.00
Paid	Rs. _____
Balance	Rs. 50,37,659.00

13. Since with effect from 12.7.2011, the exemption was restricted to Rs.5 crores, the petitioner decided to close down its business and ultimately closed on its business. The learned senior counsel appearing for the petitioner submits that the

petitioner had stock transferred refined soya oil during the period in dispute on branch transfer from The State of Maharashtra. These were on the strength of Form F Declarations issued by the respondents themselves.

14. The learned Senior counsel for the petitioner further submits that the respondent's counter part in the State of Maharashtra has also confirmed vide order 31.03.2015 that there was a stock transfer for a turnover of Rs.38,27,01,499/- from Maharashtra on the strength of Form F Declarations/certificates furnished and after due examination of sale patti, transport details etc. It was also submitted that in the light of the said assessment, the assessment in Tamil Nadu cannot re-opened by the respondent. It is further submitted that the entire demand has been confirmed based on assumptions, presumptions and conjectures and therefore the impugned orders are liable to be quashed.

15. Per contra, the learned counsel for the respondent submits that the impugned orders are well reasoned and require no interference. It is further submitted that the petitioner has an alternate remedy before the Appellate Deputy Commissioner and therefore the writ petitions were liable to be dismissed. It is also submitted that there are several disputed questions of fact which cannot be agitated before this Hon'ble Court under the writ jurisdiction of this Court.

16. I have considered the arguments of the learned senior counsel for the petitioner and the respondent.

17. The edifice of the investigations which culminated in the two show cause notices and eventually the two impugned orders proceed on the assumption that after the Government of Tamil Nadu had restricted the exemption to Rs.5 crores with effect from 12.7.2011, petitioner would have been liable to pay tax on turnover exceeding Rs.5 crores and since the petitioner has closed its operation is plausible that indeed there was no branch transfer all along.

18. It has been assumed in the impugned order that in the absence of the details of complete addresses of the local buyer's/ purchaser of the petitioner and absence of their TIN number in the sale bills/invoice and in the absence of any receipt proof of payment for the sales effected in the State of Tamil Nadu, the claim of the petitioner in the sales tax return as local sales exempt could not be allowed and therefore the petitioner was liable to pay tax at 4% as not covered by "C"

Form.

19. It has been further stated that there were no stocks at the time of inspection on 26.9.2011 and 27.9.2011 and therefore petitioner was not only liable to pay tax as proposed in the notice but also penalty under Section 27 (3) (c) of the TN VAT Act, 2006.

20. It is noticed that the impugned orders the respondent has disputed the claim of the petitioner regarding branch transfer even though the respondent's counter part has accepted the same in the State of Maharashtra for the period between 01.04.2010 to 31.03.2011. In the impugned order, it has been observed that "If the dealers had actually sold the refined soya oil locally, they might have mentioned the buyers full and correct address with TIN of all the buyers, further the dealer did not produce any xerox copies of the sale invoice in support of the claim.

21. The amount demanded in the impugned order proceed on the assumption, presumptions and conjectures that the goods were not received and therefore the petitioner had wrongly claimed exemption under the exemption is available for local sale up to Rs.500 crores which was available till 12.7.2011. This is contrary to law settled by the Hon'ble Supreme Court in Rukumanand Bairoliya vs .State of Bihar (1971)3 SCC 167. The respondent cannot proceed on assumption, presumption and conjectures.

22. In the impugned order, it has been mentioned that the petitioner has not produced any documents to substantiate receipt of goods from the state of Maharashtra on the strength of Form F issued by the respondent. However, the annexures appended to various Form F give the details of the vehicle number together with the date, challan number and the number of Tin which were allegedly transported.

23. Since this issue would require a proper examination by the respondent, I am of the view that the impugned order cannot be sustained. Further, if there was no receipt of the refined soya oil as has assumed in the impugned order, the option that was available to the respondent was to only impose penalty under Section 10 of the Central Sales Tax Act, 1956. There is no power to recover tax.

24. If at all, tax was to be levied, it was to be levied

only by the respondent's counter part in Maharashtra who is the jurisdictional Commercial Tax Officer to recover that on the turnover which were allegedly disguised as branch transfers to the petitioner's branch at Coimbatore to wrongly claim exemption in Tamil Nadu.

25. In the light of the above observation, I am inclined to set aside the impugned orders and quash the same and remit these two cases back to the respondent to pass fresh orders within a period of three months from the date of receipt of copy of this order. The respondent shall pass appropriate orders keeping the above observation in mind before passing such orders in accordance with law. Needless to state, before passing such order the petitioner shall be heard.

26. These Writ petitions stand allowed by way of remand with the above observation. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

kkd

To

The Commercial Tax Officer,
Trichy Road Assessment Circle,
Coimbatore 18.

+1 cc to M/s.Special Government Pleader(Taxes)
sr6831

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Pre-delivery Common Order
in W.P.Nos.42190,42191,
42311 & 42312 of 2016 and
W.M.P.Nos.36094, 36095,
36218 & 36219 of 2016

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