BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.9368 & 9370 of 2020

and

WMP(MD) Nos.8517 & 8518 of 2020

M/s.Lion Dates Impex Private Limited,
Represented by its Director P.Ponnudurai,
No.4-A/3-3, Cauvery Road, Devadhanam,
Trichy -2. :Petitioner in both WPs

Vs.

1.The State of Tamilnadu,
Represented by the Secretary to Government,
Commercial Taxes Department,
Fort St.George,
Chennai – 6000 009.

2.The Assistant Commissioner(ST),
Rock Fort Assessment Circle,
Commercial Taxes Buildings,
Trichy. :Respondents in both WPs

COMMON PRAYER: Writ petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent in TNGST/3401331/2004-05 (TN.Entry Tax Asst./2004-05) dated 26.06.2020 and TNGST/3401331/2003-04(T.N.Entry Tax Asst./2003-04) dated 26.06.2020 on the file of the second respondent herein and quash the same as the impugned orders of the 2nd respondent is without jurisdiction, arbitrary, against section 12(3)(b) of the Tamilnadu General Sales Tax Act 1956 and pre-mature as the impugned proceedings of the first respondent is contrary to the judgment of Larger Constitutional Bench rendered in Civil Appeal No.3453 of 2002 dated 11.11.2016 since reported in 2017(12) SCC Page No.1 in the matter of M/s.Jindal Stainless Steel Vs.State of Haryana and others particularly in respect of directions whether the impugned levy under the entry tax is discriminatory of Article 304(a) of the Constitution of India is to be decided by the regular Bench hearing the matter and whether the entire state can be local area is to be decided in appropriate proceedings and consequent to which the batch of writ petitions are pending before the Principal Bench of the Madras High Court to decide about the above questions or issue and pass such other orders.

For Petitioner
(in both WPs) : Mr.S.Karunakar
For Respondent
(in both WPs) : Mrs.J.Padmavathi Devi
Special Government Pleader

COMMON ORDER

Heard the learned counsel appearing for the Writ Petitioner and the learned Special Government Pleader appearing for the respondents.

2.The learned Special Government Pleader at the outset submitted that she wants to file a counter affidavit, for which, she sought for 10 days time. I declined to accept the said request made by the learned Special Government Pleader, for the simple reason that I only intend to remand the matter.

3. The case on hand pertains to the assessment year 2003-2004 and 2004-2005. The petitioner received a pre assessment notice dated 12.06.2020, in which it was also stated that on 25.06.2020, the petitioner would be personally heard. The petitioner did not respond to the said notice. On 26.06.2020, the impugned orders came to be passed levying penalty on the petitioner herein. Questioning the same, the Writ Petitions came to be filed.

4. The petitioner's counsel states that he had already remitted the tax and what is now under challenge is only levy of penalty. The petitioner's counsel states that only due to prevalence of COVID-19 pandemic, the petitioner could not respond to the pre assessment notice dated 25.06.2020. I am of the view that the respondents could have waited for some more time and given one more opportunity to the petitioner herein to reply.

5.In this view of the matter, the impugned order is quashed. The petitioner's counsel states that within one week from the date of receipt of a copy of this order, the petitioner would submit a written explanation to the second respondent. The second respondent can thereafter hold personal hearing and pass orders afresh and in accordance with law. I make it clear that I have not gone into the merits of the matter. The impugned orders have been quashed only on the technical ground namely that the petitioner deserves to be given one more opportunity. The contentions of the respective parties are left open.

6. With these observations, the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary to Government of Tamilnadu,
Commercial Taxes Department,
Fort St.George,
Chennai - 6000 009.

2.The Assistant Commissioner(ST),
Rock Fort Assessment Circle,
Commercial Taxes Buildings,
Trichy.

+1 CC to SPL GP (SR-16257[F] dated 08/09/2020)

Common order made in
W.P.(MD)Nos.9368 & 9370 of 2020 and
WMP(MD) Nos.8517 & 8518 of 2020
07.09.2020

VB (14.09.2020) 3P 4C