BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.03.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.3540, 3545 & 3546 of 2021
and
W.M.P.(MD)Nos.2863, 2868 & 2870 of 2021

M/s.V.V.V & Sons Edible Oils Ltd.,
(formerly known as M/s.V.V.Vanniaperumal & Sons),
represented by its Director,
443 Main Bazaar,
Virudhunagar-626 001. ... Petitioner in all W.Ps.

-Vs-

The State Tax Officer-I,
Virudhunagar. ... Respondent in all W.Ps.

Prayer in W.P.(MD)No.3540 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent in his proceedings in Entry Tax Assessment No.5720025/2002-03, quash the assessment order dated 22.12.2020 passed therein.

Prayer in W.P.(MD)No.3545 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent in his proceedings in Entry Tax Assessment No.5720025/2003-04, quash the assessment order dated 22.12.2020 passed therein.

Prayer in W.P.(MD)No.3546 of 2021: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent in his proceedings in Entry Tax Assessment No.5720025/2004-05, quash the assessment order dated 22.12.2020 passed therein.

For Petitioner : Mr.P.V.Sudakar
for Mr.S.Raja Jeya Chandra Paul(in all WPs)
For Respondent : Mrs.J.Padmavathi Devi
(in all W.Ps.) Special Government Pleader

COMMON ORDER

Heard the learned counsel on either side. This Court had the benefit of assistance by Thiru.Kumaresan, jurisdictional Assessing Officer.

2.M/s.V.V.V and Sons Edible Oils Limited is the petitioner in these writ petitions. The assessment years pertain to 2002-03, 2003-04 & 2004-05. The issue relates to liability of the petitioner to pay entry tax on inter-state purchases of packing materials namely HDPE, LDPE films, bags, etc., used by the petitioner in the packing of edible oil manufactured by them in pouches.

3.Tamil Nadu Tax on Entry of Goods into local Areas Act 2001 (Act No.20 of 2001), was put to challenge in a batch of writ petitions. Interim order had also been granted in those writ petitions. It is stated that the petitioner had also challenged the validity of the said Act. The Act was struck down by the Hon'ble First Bench in the year 2007. The State took the matter on appeal and the Hon'ble Supreme Court in the year 2017 sustained the validity of the Act. In view of the pendency of the challenge to the validity of the Act, the petitioner did not think it necessary to file returns under Tamil Nadu Act 20 of 2001, though notice was issued as early as on 25.08.2004. However, following the upholding of the validity of the Act, the issue got resurrected and the assessing authority issued notices dated 19.08.2019. Instead of responding to the notices, the petitioner moved this Court by filing W.P.(MD)Nos.20138, 12130 and 12131 of 2019 questioning them. The said Writ Petitions were disposed of on 19.09.2019 by directing the petitioners to file returns of entry tax in terms of Section 7 of the Entry Tax Act for the aforesaid assessment years. On filing of such returns, the assessing authority was directed to pass orders of assessment *de novo* within a period of three moths thereafter. Availing the opportunity granted by this Court, the petitioner filed returns on 19.10.2020. The assessing officer had also granted personal hearing to the petitioner. Thereafter, the impugned orders dated 22.12.2020 came to be passed levying entry tax and penalty on the petitioner. The same is under challenge in these writ petitions.

4.The respondents have filed a detailed counter affidavits seeking to sustain the impugned orders. The learned Special Government Pleader took me through its contents. The assessing officer pointed out that the petitioner should have paid the entry tax the moment goods in question entered the territory of Tamil Nadu. It is true that the Madras High Court, in atleast two decisions, namely ***Kasi and Sethu Vs. DCTO, Kumbakonam and another reported in 2003 131 STC 73 and M/s.C.A.Motors Vs. The Commercial Tax Officer, Thiruvarur reported in 2019-VIL-448-MAD***, has held that just as an assessee can seek reduction of tax liability under TNGST to the extent of entry tax paid under Tamil Nadu Act 20 of 2001, the converse adjustment is also permissible. But then, it is for the assessee to place the materials to show that such a matching exercise can be undertaken. He also would point that liability to pay entry tax arose earlier in point of time. Sales tax is paid only when the sale actually takes place. Thus, the Department would be put to loss of revenue because of such belated payment. Though the rate of tax payable under TNGST Act as well as entry tax in respect of the goods in question is one and the same, still in view of the time gap as mentioned above, the department has been put to loss. He also pointed out that the assessee in the case on hand has not placed materials to pass an appropriate order.

5.I have to necessarily sustain the stand of the assessing officer. Shri.Rooban, Advocate, reminded me that vide order dated 05.12.2018 in W.P.(MD)No.19727 of 2015 *(Tvl.Sri Karpagamoorthi Agencies VS. Secretary, Department of Commercial Taxes, Chennai and another)*, I had observed that though the assessing authority under the Entry Tax Act and the Assessing Authority under TNVAT Act are one the same and book adjustment is possible, at the same time, it cannot be disputed that the department will be put to loss on account of non payment of entry tax at the correct point of time. This is because, the goods purchased by the dealer would be sold only later in point of time. Therefore, I had held that the dealer is bound to pay interest @ 2% per month on the entry tax amount from the date when it is payable till the date when the tax under other statute is paid.

6.The learned counsel appearing for the petitioner states that the petitioner can be given one more opportunity, so that, the petitioner can place all the relevant materials for passing of appropriate orders by the assessing officer. The petitioner also gives an undertaking before this Court that covering all the three writ petitions, the petitioner would remit a sum of Rs.5,00,000/- within a period of two weeks from the date of receipt of a copy of this order towards interest. This undertaking is recorded.

7.In the cases on hand, the assessing officer has not given the benefit of such converse adjustment. Hence, the orders impugned in the writ petitions are quashed. The matters are remitted to the file of the respondent to pass orders afresh in accordance with law. The petitioner will appear before the assessing authority on 16.04.2021. I make it clear that the petitioner will not be given any independent personal hearing notice. On the said date, the petitioner will place the materials indicating the date of payment of tax under TNGST Act in respect of the goods, on which, entry tax was payable. Thereafter, the assessing officer will pass orders in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

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

The State Tax Officer-I,
Virudhunagar.

+1cc to Mr.S.RAJA JEYA CHANDRA PAUL, ADVOCATE, SR NO.14608

W.P.(MD)Nos.3540, 3545 & 3546 of 2021

MR(11.05.2021) 4P 3C