BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

AND

THE HONOURABLE MRS. JUSTICE S.ANANTHI

W.A.(MD)Nos.915 to 917 of 2021
and CMP(MD) Nos.4177 to 4179 of 2021

M/s.V.V.V. & Sons Edible Oils Ltd.,
rep. by its Director,
No.443 Main Bazaar
Virudhunagar :Appellant in all appeals/ Petitioner

Vs.

The State Tax Officer I
Virudhunagar-I Assessment Circle,
Virudhunagar : Respondent in all appeals/ Respondent

PRAYER: Appeals filed under Clause 15 of the Letters Patent against the orders of this Court in W.P.(MD) Nos.3540, 3545 and 3546 / 2021 dated 30.03.2021.

Prayer in WP(MD). 3540/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records of the respondent in his proceedings in Entry Tax Assessment No. 5720025/2002-03, quash the assessment order dt. 22.12.2020 passed therein and pass such further or other order or orders as this Honble Court may deem fit and proper in the circumstances of the case and thus render justice

Prayer in WP(MD). 3545/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records of the respondent in his proceedings in Entry Tax Assessment No. 5720025/2003-04, quash the assessment order dt. 22.12.2020 passed therein and pass such further or other order or orders as this Honble Court may deem fit and proper in the circumstances of the case and thus render justice

Prayer in WP(MD). 3546/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorari calling for the records of the respondent in his proceedings in Entry Tax Assessment No. 5720025/2004-05 quash the assessment order dt. 22.12.2020 passed therein and pass such further or other order or orders as this Honble Court may deem fit and proper in the circumstances of the case and thus render justice

For Appellant	:Mr.K.L.Ramani Senior Counsel for Mr.S.Raja Jeya Chandra Paul in all appeals
For Respondents	:Ms.J.Padmavathi Devi Special Government pleader in all appeals

COMMON JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

These appeals have been filed by a dealer, who is registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax and earlier under the provisions of the Tamil Nadu General Sales Tax Act.

2. In all these appeals, the appellant and the respondent are one and the same and for easy reference, the appellant is referred to as 'the assessee' and the respondent is referred to as 'the assessing officer'.

3. The issue involved in these appeals is with regard to the levy of entry tax under the provisions of the Tamil Nadu Tax on Entry of Goods into Local Areas Act 2001 (Act No.20 of 2001). The present litigation is a third round of litigation. Initially, the assessee had challenged the validity of the Act and was successful before the High Court. But, ultimately, the Hon'ble Supreme Court, in the case of State of Tamil Nadu and others v. ITC Limited and another (Civil Appeal No(s).11086-89 of 2017 dated 23.08.2017, filed by the State, held that the Tamil Nadu Entry Tax Act is a valid enactment. Pursuant to which, the respondent Assessing Officer issued notice to the assessee dated 19.08.2019 directing them to file objections to the pre-assessment notice dated 25.08.2004. The assessee filed writ petitions before this

Court in W.P.(MD) Nos.20138, 12130 and 12131 of 2019 challenging the said notices directing the petitioner to give their objections dated 19.08.2019.

4. The said writ petitions were disposed of following the decision of this Court in ***CA Motors v. The Commercial Tax Officer, Thiruvarur [2019 VIL 448 (Mad)]*** and directed the assessee to file returns under the Entry Tax Act in terms of Section 7 of the Entry Tax Act for the assessment years 2002-03, 2003-04, 2004-05 within the stipulated time and on returns being filed, the assessing officer was directed to pass orders.

5. In terms of the directions issued, though not within the time permitted, the assessee had filed the returns. The assessing officer, by order dated 22.12.2020, referring to under what circumstances the pre- assessment notice was issued, the writ petition filed by the assessee that direction issued therein and the contents of the returns filed by the assessee, held that the assessee has not opted for adjustment of entry tax payment to the regular tax due for the corresponding months and accordingly proceeded to accept the returns filed under the Entry Tax Act and determined the tax payable and also levied penalty. Challenging these orders, the assessee once again approached this Court and filed the writ petitions. The writ petitions were allowed quashing the assessment orders and directed the assessing officer to give the benefit of such converse adjustment. The assessment officer had committed an error probably due to the fact that he had perused the operative portion of the order passed in the earlier writ petitions filed by the assessee, which were disposed of by order dated 19.09.2019, following the judgment in CA Motors. However, the assessing officer was required to read the judgment of CA Motors in its entirety, more particularly, Paragraph 28 of the order, which gives the benefit of converse credit to the assessee. Therefore, the learned Writ Court was right in allowing the writ petitions and directing the assessing officer to allow the benefit of converse adjustment. However, while doing so in Paragraph 5 of the impugned order, the writ Court referring to an earlier decision in Sri Karpaga Moorthy Agencies v. Secretary, Department of Commercial Taxes, Chennai and another in W.P.(MD) No.19727 of 2015 dated 05.12.2018, held that the department will be put to loss on account of non payment of entry tax at the correct point of time. Therefore, in the said case, it was held that the dealer was bound to pay interest at 2% per month on the entry tax amount from the date when it is payable till the date under the tax under other statute is paid.

6. In our considered view, the observations/finding rendered in Paragraph 5 has to be treated as a finding, which was not

required to be given in the case, especially when the Court has allowed the writ petition and directed the assessing officer to give the benefit of converse adjustment by remanding the matter. Therefore, the Court ought to have left the issues open for the assessing officer to take an independent decision.

7. The learned Special Government Pleader appearing for the respondents had referred to Paragraph 10 of the judgment in the case of ***ARAS Motors Private Ltd., v. Assistant Commissioner, (CT), West Veli Street Circle, Madurai, [2020] 81 GSTR 168 (Mad)***, wherein the Court had referred to the decision in the case of ***S.Girinathan v. Deputy Commercial Tax Officer, Thirupathur [2015] 77 VST 45 (Mad)*** and it was observed the provisions of the Tamil Nadu Additional Sales Tax Act drew from the Tamil Nadu General Sales Tax only in relation to the levy of tax and interest and this could not be extended to support the levy of penalty. Therefore, it is the submission of the learned Special Government Pleader that this finding is in support of the revenue.

8. In our considered view, it is too early for the writ Court to render any such finding as to whether the interest is payable or not, as the matter is now writ large on the file of the assessing officer to re-do the entire assessment and with a specific direction to give the benefit of converse adjustment. Therefore, we are of the view that the observations made in Paragraph 5 in the impugned order are premature and accordingly the same is required to be set aside and the issue to be left open.

9. In the result, the writ appeals are allowed and the finding rendered in Paragraph 5 of the impugned order is set aside and the issues are left open and the other directions issued by the learned writ Court be complied with by the respondent Assessing Officer. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RR

To

The State Tax Officer I
Virudhunagar-I Assessment Circle,
Virudhunagar

+1 CC to Mr.S.RAJA JEYA CHANDRA PAUL, Advocate (SR-18018[F] dated 29/04/2021)

Order made in
W.A.(MD)Nos.915 to 917 of 2021
29.04.2021

KM(14.06.2021) 5P 3C