BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.1178, 1179, 1180 & 1181 of 2017, 13103, 13642, 13643 of 2018
and
WMP(MD)Nos.999, 1000, 1001, 1002 of 2017 & 11975, 12411 & 12412 of 2018

Tvl.Eastern Condiments (P) Ltd.,
Rep.by its Company Secretary cum
Financial Controller U.Sivanandhan
... Petitioner in all WPs

Vs.

1.The Assistant Commissioner (CT),
Theni-I Circle, Theni.

2.The Principal Secretary/Commissioner
of Commercial Taxes,
Chepauk, Chennai-5. ... Respondents in all WPs

Prayer in WP(MD)No.1178 OF 2017: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records on the file of the first respondent in TIN No.33335120734-2009-10 dated 07.12.2016 and quash the same as illegal, invalid and unlawful.

Prayer in WP(MD). 1179/ 2017 :
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 on the file of the 1st respondent in TIN No. 33335120734-2010-11 dated 07.12.2016 and quash the same as illegal, invalid and unlawful.

Prayer in WP(MD). 1180/ 2017 :
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 on the file of the 1st respondent in TIN No.33335120734 - 2011-12 dated 08.12.2016 and quash the same as illegal, invalid and unlawful.

Prayer in WP(MD). 1181/ 2017 :

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 on the file of the 1st respondent in TIN No. 33335120734-2012-13 dated 12.12.2016 and quash the same as illegal, invalid and unlawful.

Prayer in WP(MD). 13103/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorari calling for the records on the file of the 1st respondent in TIN No.33335120734-2015-16 dated 26.04.2017 and quash the same as illegal, invalid and unlawful.

Prayer in WP(MD). 13642/ 2018 :

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 on the file of the 1st respondent in TIN No. 33335120734 - 2014-15 dated 25.01.2017 and quash the same as illegal invalid and unlawful.

Prayer in WP(MD). 13643/ 2018 :

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 on the file of the 1st respondent in TIN No. 33335120734 - 2013-14 dated 18.01.2017 and quash the same as illegal invalid and unlawful.

in all cases :

For Petitioner : Mr.A.Chandrasekaran

For Respondents : Mr.G.Arjunan, Government Advocate

COMMON ORDER

Eastern Condiments Private Limited, Theni is a manufacturer and dealer in Chilli Powder, Coriander Powder and Turmeric Powder. The petitioner company registered themselves as assessee on the file of the first respondent. The case on hand pertains to the assessment years 2009-10 to 2015-16. The petitioner's assessment was concluded on deemed assessment basis under Section 22 of the TNVAT Act. Later, their place of business was inspected and audit was conducted on 18.05.2016 by the enforcement officers wing. They noticed certain defects. The primary defect was non-levy of purchase tax. The petitioner claimed that they deal in exempted goods and that therefore purchase tax cannot be levied. Based on the report of the enforcement officers wing, pre-revision notices were issued and after eliciting response from the petitioner and holding an enquiry, the impugned orders have been passed. Since the assessment orders are for different years, there has been corresponding number of writ petitions.

2.The respondents have filed a detailed counter affidavit. The respondents controvert all the contentions raised by the petitioner. The learned Government counsel took me through the stand taken in the counter affidavit. It is also stated that the petitioner should avail the alternative remedy of appeal and not invoke the writ jurisdiction.

3.I have carefully considered the rival contentions and went through the materials on record. There can be no doubt that the case on hand is covered by an order dated 19.05.2020 passed by the Principal Seat in ***WP Nos.21982 to 21987 of 2016 (Sunrise Foods Private Limited vs. The Assistant Commissioner (CT) (FAC) Park Road Assessment Circle, Erode).*** The learned Judge held that under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 the petitioner therein was liable to pay purchase tax at the rate specified in the schedule. The aforesaid writ petitions dealt with turmeric powder. The case on hand pertains to turmeric and coriander powder as well as chilli powder which are covered by Entry No.18 Part B IV Schedule of the TNVAT Act, 2006. I am satisfied that the case on hand is absolutely similar to the factual matrix obtaining in ***Sunrise Foods Private Limited vs. The Assistant Commissioner (CT) (FAC) Park Road Assessment Circle, Erode.*** The learned Judge held as follows :

> "82.I am therefore of the view, that under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006, petitioner who is also a dealer is liable to pay purchase tax at the rate specified in the Schedules.
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> 83.To the extent the petitioner had purchased turmeric from dealers who were eligible for exemption under Section 15 Read with Item 18, Part B, IV to the Tamil Nadu Value Added Tax Act, 2006, levy under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 is attracted at rates specified in the ?Schedules? to the Act.
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> 84.To the extent the petitioner had purchased turmeric from dealers who were otherwise liable to tax in in terms of Section 3(2) of the Tamil Nadu Value Added Tax Act, 2006 but were exempted from payment of tax under Section 15 of the Tamil Nadu Value Added Tax Act, 2006, the levy under Section 12 of the Tamil Nadu Value added Tax Act, 2006 is not attracted if the petitioner's turn over was also below Rs 300 Crores during the ear. This would require verification.
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> 85.Further, Section 12(1) is subject to Section 3 (1) of the Tamil Nadu Value Added Tax Act, 2006. Therefore, to the extent the petitioner had purchased

turmeric from a dealer whose total turnover for the year was less than Rs.5lakhs, purchase tax under Section 12 (1) of the Tamil Nadu Value Added Tax Act, 2006 is not attracted as such purchase will be outside the purview of purchase tax under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006.

86.In my view, the phrase ?rates specified in the Schedules to this Act in Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 would include the rates in both the entries namely Item 52, Part B, I Schedule and Item 18, Part B, IV Schedule to the Tamil Nadu Value Added Tax Act, 2006.

87.If the total turnover of the petitioner during the relevant year did not exceed Rs. 300 crores as per Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 the Tax payable by the petitioner would be at the rates specified in the ?Schedules to this Act?which would mean the rate specified in Entry 18, Part B, IV Schedule to the Tamil Nadu Value Added Tax Act, 2006.

88.If however on the other hand, the turnover of the petitioner had exceeded Rs.300 crores, the petitioner would be liable to pay tax at the rate prescribed in Item 52, Part B, I Schedule to the Tamil Nadu Value Added Tax Act, 2006 as that would be the rates specified in the ? Schedules to this Act?. This is a factual matter which would require a proper determination by the respondent.

89.Since the impugned orders also deal with other issues. I am therefore inclined to quash the impugned orders and remit the case back to the respondent with the direction to the respondent to pass a speaking order within a period of 3 months from date of receipt of this order in terms of the above observation as far as levy of purchase tax under Section 12 (1) of the Tamil Nadu Value Added Tax Act, 2006 is concerned.

90.Accordingly, the impugned orders are quashed. The respondent is therefore directed to pass a fresh order on merits after giving the petitioner an opportunity of hearing either in person or through video conference in view of the risk on account of the threat of Covid19 pandemic. The remand proceeding shall be confined to purchase tax under Section 12(1) of the Tamil Nadu Value Added Tax Act, 2006 alone. The demand confirmed on other issues are not disturbed.

91.Petitioner is therefore directed to furnish necessary information to facilitate hearing of the case in the de-novo proceeding through video conference to the respondent within a period of 2 weeks from date of receipt of this order, if the situations so warrant on account of continuance of Covid19 pandemic. The respondent shall thereafter take the case and pass orders in the light of the above observations."

4.Respectfully following the aforesaid decision, the orders impugned in the writ petitions are quashed. These writ petitions are allowed on the same lines as mentioned above. I make it clear that the issues not dealt with in the aforesaid order are left open and it is open to the petitioner herein to canvass those contentions before the assessing officer. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P AND A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

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 Assistant Commissioner (CT),
Theni-I Circle, Theni.

2.The Principal Secretary/Commissioner
of Commercial Taxes, Chepauk, Chennai-5.

1CC TO MR. A.CHANDRASEKARAN, ADVOCATE SR 9765

KM

21/05/2021

5P/4C

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