IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM

**THE HON'BLE MR. JUSTICE S. VAIDYANATHAN**

**AND**

**THE HON'BLE MR. JUSTICE C. SARAVANAN**

W.P. Nos. 15357 to 15360 of 2007

M/s. Alsa Marine & Harvests Limited,
rep. by Eusufal Elias Saith,
Managing Director,
A-54, 11th Main Road, Anna Nagar,
Chennai – 40. ..Petitioner in all WPs

Vs.

1. The Sales Tax Appellate Tribunal (Main Bench),
City Civil Court Buildings,
Chennai – 104.

2. The Commercial Tax Officer,
Amaindakarai Assessment Circle,
Chennai – 108. ..Respondents in all WPs

Prayer: Petitions under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records on the files of the 1st respondent in T.A. Nos. 1105/01 1054/02, 1055/02 & 1052/02 dated 02.08.2006 relating to the years 1993-94, 1994-95, 1995-96 & 1996-97 (TNGST) respectively and quash the same as invalid, illegal and contrary to law.

For Petitioner :: Mr.V. Srikanth

For Respondents :: Mr.V. Prashanth Kiran,
Govt. Advocate for R2

O R D E R

**S. VAIDYANATHAN,J.**

**AND**

**C. SARAVANAN,J.**

These writ petitions are taken up for final disposal.

2. The dispute in these writ petitions is relating to taxability of sale of Replenishment (REP) Licence.

3. Though elaborate submissions were made by learned counsel for the petitioner and the learned Government Advocate for the 2nd respondent, the learned counsel for the petitioner fairly submitted that the

issue is now squarely covered against the petitioner in the petitioner's own case in the case in W.P. No. 21219 of 2007 vide order dated 27.02.2020. In the said order, this Court has referred to the decision of the Hon'ble Supreme Court in ***Yasha Overseas V. Commissioner of Sales Tax and others*** reported in ***[2008] 17 VST 182 (SC).*** The relevant portion of the decision of this Court referring to the aforesaid judgment of the Hon'ble Supreme Court is extracted hereunder:

> "*4. The Honourable Supreme Court in its detailed judgment delivered on 6th May, 2008, in the case of Yasha Overseas V.Commissioner of Sales Tax and others reported in [2008] 17 VST 182 [SC], while discussing various preedents on the issue, held that both REP licence and DEPB licence amounted to 'goods' and therefore sales thereon, was taxable under the Sales Tax Law of the State. The relevant paragraph of the said judgment is quoted hereunder:*
>
> > *'45. Thus on a detailed examination, we are unable to see how the decision in Sunrise can be said to alter the position in regard to the sale of REP licenses as hled by the earlier decision in Vikas. It is noted above that the Constitution Bench in Sunrise firmly and expressly declined to go into the question whether REP licences (or DEPB which replaced REP licences) were 'goods'. It is indeed true that the Constitution Bench in Sunrise did not approve the decision in Vikas insofar as it gave their free marketability as an additional reason to hold that REP licences were not actionable claim but 'goods' properly so called. The Constitution Bench held*

*that the assumption that actionable claims were not transferably for value was quite unfounded and the conclusion drawn on that basis was quite wrong. In paragraphs 39 and 40 of the decision, the Sunrise decision gave illustrations of a number of actionable claims which are transferable.*

*46. But to our mind that does not in any way change the position inso far as REP licences are concerned. While examining the three- Judge Bench decision in Vikas earlier in this judgment it is seen that 26 the Court first came to hold that REP licence/exim scrip fell within the definition of goods quite independently. The court found and held that REP licences had their own value; they were freely bought and sold in the market for their intrinsic value and for that reason alone those were goods. (See paragraph 29 of the decision in Vikas that is reproduced above). It was only after coming to conclusion that the Court proceeded to examine the matter in light of the observations made in Anraj relating to lottery tickets and that too because the Karnataka and Madras High Courts had heavily relied upon the Anraj decision for holding that the sale of REP licences was exigible to sales tax. On a careful reading of the decisiion in Vikas it is apparent that it was the intrinsic value of REP licence that brought it within the definition for "goods".*

*47. At this stage, we feel obliged to put in a caveat in regard to the observations made in Sunrise about marketability being a feature of distinction between 'goods' proper and actionable claims. What was said in Vikas, as we understand it, was that the innate value of REP licence and its free transferability made it into a market commodity. The illustrations given in paragraphs 39 and 40 of the decision in Sunrise, namely, (i) a right on the fulfillment of certain conditions to call for delivery of goods mentioned in a contract, (ii) negotiable instruments, (iii) right to recover insurance money (iv) a partner's right to sue for an account of a dissolved partnership, (v) the right to claim the benefit of a contract not coupled with any liability, (vi) a claim for arrears of rent and (vii) a right to the credit in a provident fund* *account are all indeed transferable for cosideration but none of these is a market commodity. The holder of any of the above rights or claims may or may not be able to find a ready buyer at a given time;conversely a prospective buyer may not find any of the above rights or claims available for purchase by going to the market at any time. Contrary to this, REP licenses had always a market, that is to say, there were people willing to sell and others willing to buy REP licences at all times. Its innate value coupled with free transferability made REP licences into a market commodity and it was that aspect of the matter that Vikas referred to for holding that REP licences could not be classified as actionable claims. Those were goods properly so-called having innte value and a ready market. The position becomes further clear by the completely contrasting findings in Sunrise (in regard to lottery tickets) and in Vikas ( in regard to REP licences). In 28 Sunrise after giving illustrations of transferable actionable claims (paragraphs 39 and 40) paragraph 41 begins as:*

> *"A lottery ticket has no value itself. It is a mere piece of paper."*

*48. On the contrary, in Vikas paragraph 29 begins as follows:*

> *"The above provisions do establish tht REP licences have their own value. They are bought and sold as such."*

*49. We thus have not the slightest doubt in our mind that the decision in Sunrise in no way affects the position insofar as REP licences are concerned and the legal position in regard to their sale is concluded by the decision in Vikas.*

*50. This takes us to the next question, whether what is said in Vikas in regard to REP licences would also apply in the case of DEPB. On behalf of the appellants it is strongly contended that DEPB has materially different features and hence, the decision in Vikas will have no application to it. Mr.A.K. Jain, learned counsel appearing for the appellants in Civil Appeal No. 4075/2007 especially*

> *make elaborate arguments to bring out the points of distinction between REP licence and DEPB. But before proceedings to examine what is DEPB and how far it is different from REP licence it will be useful to take a look at the provisions of law under which the present cases arise and to establish their similarity with the statutory provisions that came up for consideration in Vikas and Sunrise. As noted above, the present appeals arise under the Delhi Sales Tax Act, 1975, the Kerala General Sales Tax Act, 1963 and the Bombay Sales Tax Act, 1959.' "*

4. In the light of the above, these writ petitions are dismissed. No costs.

(S.V.N.J.) (C.S.N.J.)

nv 26.10.2022

To
The Commercial Tax Officer,
Amaindakarai Assessment Circle,
Chennai – 108.

**S. VAIDYANATHAN,J.**

**AND**

**C. SARAVANAN,J.**

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