IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

CORAM

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

AND

THE HONOURABLE MR. JUSTICE C. SARAVANAN

W.A.Nos.2366 & 2368 of 2022
&
C.M.P. No. 18000 of 2022

M/s. Paranthaman Hydraulics and Equipments
rep. by its Proprietor – T.P. Thangaraj
No.135-A, TTP Complex,
Sankari Main Road,
Sitharampalayam,
Tiruchengode – 637 211,
Namakkal District. ..Appellant in W.A. No. 2366 of 2022

M/s. Paranthaman Rock Drills,
rep. by its Proprietor T.P. Thangaraj
No.136-B, Sankari Main Road,
Sitharampalayam,
Tiruchengode – 637 211,
Namakkal District. ..Appellant in W.A. No. 2368 of 2022

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Commercial Taxes and Registration
(D2) Department, Secretariat,
Chennai – 600 009.

2. The Commissioner of Commercial
Taxes, Ezhilagam,
Chepauk, Chennai – 600 005.

3. The Commercial Tax Officer (FAC),
Tiruchengode (Town) Assessment
Circle, Tiruchengode,
Namakkal District. ..Respondents in both Writ Appeals

Prayer: Writ Appeals under Clause 15 of the Letters Patent as against the order of this Court dated 21.06.2022 passed in W.P.Nos.15334 & 15339 of 2022.

For Appellants in both Writ Appeals :: Ms.R. Hemalatha

For Respondents :: Mr.C. Harsharaj,
Additional Govt. Pleader
for R1 to R3

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JUDGMENT

The appellants/writ petitioners have questioned the order dated 21.06.2022 passed by this Court in W.P. Nos.15334 & 15339 of 2022.

2. The challenge in the writ petitions was to the order dated 08.03.2022 passed by the 1st respondent herein rejecting the request of the appellants/writ petitioners for waiver of tax arrears and penalty. The appellants/writ petitioners had earlier filed W.P. Nos.5982 & 5984 of 2009 assailing the orders of assessment dated 18.03.2009 and seeking a direction to the Assessing Authority to redo the assessments based upon a Circular issued by the Commissioner of Commercial Taxes. Though the writ petitions were dismissed on 15.10.2015, the petitioners were permitted to seek waiver of the disputed amounts raised in the impugned assessments and the Committee for waiver was to consider the request and grant the same.

3. As against the order dated 15.10.2015 passed in W.P. Nos. 5982 and 5984 of 2009, intra-court appeals were filed in W.A.Nos. 4321 of 2019 and 34 of 2020. A Division Bench of this Court, by order dated 20.12.2019, while granting status quo about the recovery of the tax imposed by the assessing authority on the appellants/writ petitioners, was inclined to remit the matter back to the Commissioner of Commercial Taxes for deciding the issue involved under Section 48A of the Tamil Nadu Value Added Tax Act, 2006 once again, after hearing both parties. The relevant portion of the order dated 20.12.2019 passed by the Division Bench is extracted hereunder:

> *"The interesting question raised in the present Writ Appeal is, as to whether the Drilling Rigs sold by the Assessee and mounted on the Truck Chassis, which is purchased and owned by the purchasing dealer itself, is taxable at the rate of 4% as 'Tools' under Entry 138 of Part 'B' of Schedule I to TNVAT Act, (or) at the rate of 12.5% as 'Components of a Motor Vehicle' under Entry 49 of Part 'C' of Schedule I.*
>
> *2. Having heard both the sides, prima facie, we are of the opinion that both the views, one taken by the learned Commissioner in the Clarification dated 25.05.2007 holding it*

to be taxable at 4% and the other view taken by the assessing authority, who held it to be taxable at 12.5%, are not sustainable views. The Drilling Rigs, prima facie appear to be Machinery and Equipments sold by the Assessee, which, upon being mounted on the Truck Chassis, can work as a Bore Hole Drilling Rigs by the purchasing dealers.

3. Therefore, to avoid any multiplicity of litigations, as the Clarification issued by the Commissioner is binding on the all Assessing Authorities in the State, we are incline to remit the matter back to the learned Commissioner for deciding the said issue under Section 48A of the TNVAT Act once again, after hearing both parties viz., the Assessee and the Revenue.

...

6. Till then, the status quo about the recovery of the tax imposed by the assessing authority on the petitioner shall be maintained...."

4. Pursuant to the orders passed by the Division Bench of this Court, the appellants/writ petitioners had filed applications seeking clarification before the Commissioner of Commercial Taxes and the learned Commissioner had issued a fresh order on 31.01.2020 giving his opinion and clarification holding that "manufacture of Water Borehole Drilling Rigs

to be mounted on the Chassis supplied with Compressor" is taxable at 12.5% or 14.5% as the case may be, under Entry 69 in Part C of First Shcedule and not under Entry 25 in Part B of First Schedule of the Tamil Nadu Value Added Tax Act, 2006.

5. In the light of the said clarification issued by the learned Commissioner, the order passed by the learned Single Judge in W.P. Nos. 5982 & 5984 of 2009 was set aside and the writ appeals were disposed of by judgment dated 27.02.2020 giving three options to the appellants, i.e, either to approach the learned Single Judge with appropriate amendment application or file a fresh writ petition to challenge the order dated 31.01.2020 passed by the learned Commissioner or to approach the Departmental Authorities in the matter. Following the options given, the appellants/writ petitioners chose to approach the Departmental Authorities with applications seeking waiver of tax and penalty for the assessment years concerned, which came to be rejected by the 1st respondent by orders dated 08.03.2022 relying upon the clarification issued by the learned Commissioner dated 31.01.2020, necessitating the appellants/writ

petitioners to approach this Court by way of W.P. Nos. 15334 & 15339 of 2022.

6. Learned Single Judge, by the order under challenge, dismissed the writ petitions observing as hereunder:

> *"8. To be noted, that the Division Bench has held that the Clarification issued by the Commissioner is binding upon all Assessing Authorities in order dated 20.12.2019 and has also referred to the Clarification issued on 31.01.2020 in its subsequent order dated 27.02.2020. In fact, the petitiones were granted leave to challenge order dated 31.01.2020 which liberty was conscious not availed of, as the petitioners preferred to approach the Departmental Authorities for waiver, that has, in my view, been rightly rejected."*

7. Heard the learned counsel for the appellants and the learned Additional Government Pleader for the respondents.

8. The facts narrated supra are not in dispute. As the Assessee has

decided to go before the Authority, the Assessee, as a matter of right cannot demand that the entire waiver shall be granted. The Authority has the power either to waive or reject the waiver in its entirety and he also has the power to demand a higher perccentage as an interim measure till the issue is finally decided. In case, the Authority concerned accepts the case of the Assessee, the excess amount, if any collected will have to be refunded to the Assessee. The Authority, while passing a final order can either accept 4% or 12.5%, depending upon the acceptance of the contentions of the parties, but cannot increase the percentage from 4% or reduce it from 12.5%.

9. Though we find that the order of the learned Single Judge need not be interfered with, since the entire issue is at large and the issue has to be decided on merits, in order to give a quietus to the entire issue and the matter being pending before the authorities, we are of the view that, as an interim measure, the respective appellants can be directed to pay another 4% of the tax. Accordingly, the respective appellants are directed to pay 4% of the tax determined by the authorities, apart from 4% already remitted, i.e., Total 8% (4% + 4%) within a period of four weeks from the date of receipt

of a copy of this order. The impugned order is set aside and the matter is remitted back to the authority concerned for passing appropriate orders on merits and in accordance with law. The amount to be paid by the respective appellants, over and above, 4% will be subject to the determination by the authorities and the orders to be passed by the authorities.

10. The writ appeals are disposed of accordingly. No costs. Connected C.M.P. is closed.

(S.V.N.J.) (C.S.N.J.)
02.11.2022

nv

To

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