BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.02.2022
CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) No.3586 of 2020
and
W.M.P.(MD)No.3028 of 2020

M/s.W.Hogewoning Dried Flowers India Pvt. Ltd.,
Rep. by its Managing Director,
Ruessel Motha,
No.111/34/9, State Bank Colony,
Tuticorin - 628 002. .. Petitioner

Versus

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Commercial Taxes Department,
Fort St. George,
Chennai - 600 009.

2.The Assistant Commissioner (ST),
Tuticorin - 3 Assessment Circle,
Commercial Taxes Buildings,
Tuticorin. .. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to quash the proceeding in TIN 5921238/04-05, dated 27.11.2019, on the file of the second respondent herein is wholly without jurisdiction, being contrary to the Provisions of the Tamil Nadu Tax on Entry of Goods Act, 2001 and further direct the first respondent for *de novo* consideration in the light of the judgment of the Hon'ble Supreme Court in the case of Jindal (Civil Appeal No.3453/2002).

For Petitioner : Mr.S.Karunakar

For Respondents : Mr.J.K.Jayaseelan
Government Advocate

ORDER

The petitioner has challenged the impugned assessment notice dated 28.08.2019, on the strength of certain observations made in the decision of the Hon'ble Supreme Court in **Jindal Stainless Limited and another Vs. State of Haryana and others** reported in **2017 (12) SCC 1.** A particular reference was made to the conclusion in

Paragraphs 1159.8 and 1160 of the said decision, which reads as under:-

''1159.8.Article 304(a) frowns upon discrimination (of a hostile nature in the protectionist sense) and not on mere differentiation. Therefore, incentives, set-offs, etc. granted to a specified class of dealers for a limited period of time in a non-hostile fashion with a view to developing economically backward areas would not violate Article 304(a). The question whether the levies in the present case indeed satisfy this test is left to be determined by the regular Benches hearing the matters.

1160.States are well within their right to design their fiscal legislations to ensure that the tax burden on goods imported from other States and goods produced within the State fall equally. Such measures if taken would not contravene Article 304(a) of the Constitution. The question whether the levies in the present case indeed satisfy this test to be determined by the regular Benches hearing the matters''.

2.It is the specific case of the petitioner that they are the manufacturer of Bouquet and were discharging local tax under the provisions of erstwhile Tamil Nadu Sales Tax Act, 1959.

3.The learned counsel for the petitioner submits that even if the petitioner is liable to entry tax at this distant point of time, it may not be possible for the petitioner to claim set off in terms of Section 4 of the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001. On a query, the learned counsel for the petitioner answered that the imported goods from the States where PVC Pipes and Tubes were subjected to 10% entry tax and that the final product namely, Bouquet sold by the petitioner also was liable to tax at 10% under the Tamil Nadu General Sales Tax Act, 1959 and that the petitioner has also discharged the tax liability. It is, therefore, submitted that though the petitioner has challenged the validity of entry tax in the light of the observations of the Hon'ble Supreme Court in **Jindal's case** [supra], the petitioner will not get alternate benefit of set off under Section 4(1) and (2) of the Tamil Nadu Tax on Entry of Goods into Local Areas Act 2001, which reads as under:-

''4. Reduction in tax liability

(1) Where an importer of any scheduled goods liable to pay tax under this Act, being a dealer in scheduled goods becomes liable to pay tax under the General Sales Tax Act and additional sales tax under the Tamil Nadu Additional Sales Tax Act, 1970 (Tamil Nadu Act 14 of 1970), by virtue of the sale of such scheduled goods, then his liability under those Acts shall be reduced to the extent of tax paid under this Act.

(2) Where an importer who, not being a dealer in scheduled goods, had purchased the scheduled goods for his own use or consumption in any Union Territory, or any other State, then his liability under this Act, shall, subject to such conditions as may be prescribed, be reduced to the extent of the amount of tax-paid, if any, under the law relating to General Sales Tax as may be in force in that Union Territory or State.''

4.I have considered the arguments advanced by the learned counsel on either side.

5.The petitioner has not clearly brought out on facts as to whether the final product manufactured by the petitioner had suffered local tax under the Tamil Nadu General Sales Tax Act, 1959. If the petitioner was liable to pay local tax under the Tamil Nadu General Sales Tax Act, 1959, the petitioner would have been entitled to set off in terms of Section 4 of the Tamil Nadu Tax on Entry of Goods into Local Areas Act 2001. This is not clear from the affidavit filed in support of the present Writ Petition.

6.Considering the above, this Court is inclined to dismiss this Writ Petition. However, liberty is given to the petitioner to file a statutory appeal before the appellate authority within a period of 30 days from the date of receipt of a copy of this order under the provisions of the Tamil Nadu Tax on Entry of Goods into Local Areas Act, 2001. Needless to state that the petitioner will have also to make mandatory pre-deposit of undisputed tax at the time of filing the appeal. If there is such a compliance, the appellate authority shall entertain the appeal and dispose of the same in accordance with law and on merits after hearing the petitioner.

7.This Writ Petition stands dismissed with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

smn2

To

1.The Secretary to Government of Tamil Nadu,
Commercial Taxes Department,
Fort St. George,
Chennai - 600 009.

2.The Assistant Commissioner (ST),
Tuticorin - 3 Assessment Circle,
Commercial Taxes Buildings,
Tuticorin.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-6237[F] dated 15/02/2022)

+1 CC to M/s.SPL GP (SR-6537[F] dated 16/02/2022)

WP (MD) No.3586 of 2020
14.02.2022

RK(24/02/2022) 4P 5C