BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.03.2022
CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) Nos.5998, 15464, 15469 & 15473 of 2020, 7685 & 7686 of 2018, 21777, 21780, 21791 & 23868 of 2019
&
W.M.P.(MD)Nos.5190, 12983, 12988 & 12992 of 2020, 7305 & 7306 of 2018, 18515, 18516, 18527 & 20493 of 2019

S.Kanagasabai
Rep by its Partner S.Rajasekaran
... Petitioner in WP(MD). 5998 of 2020

Chandra Traders, Rep.By its Proprietor,
V.Muneeshwaran, ... Petitioner in WP(MD).Nos. 15464, 15469, & 15473 of 2020

Chandra Dhall Mill, Rep. by its Proprietrix:
Karthigadevi ... Petitioner in WP(MD).Nos. 7685 & 7686 of 2018

Tvl.K.K,Gurusamy and Co., Rep by its Partner
K.G.Elankumaran ... Petitioner in WP(MD).Nos. 21777 & 21780 of 2019

Tvl.K.Guru and Co., Rep. by its Partner.
K.G.Elankumaran ... Petitioner in WP(MD). 21791 & 23868 & 2019

Vs

1.. The State Tax Officer(ST)
Thoothukudi-3 Assessment Circle,
282 North Beach Road,
Tuticorin-628 001 .. 1st Respondant in WP(MD) Nos.5998, 15464, 15469 & 15473 of 2020

1. The Commercial Tax Officer(Addl) (ST)
Tuticorin- III .. 1st Respondant in WP(MD). Nos.7685 & 7686 of 2018

1. The Assistant Commissioner (ST)
Tuticorin-2, Assessment Circle,
282 North Beach Road,
Tuticorin-628 001 .. 1st Respondant in WP(MD) Nos.21777, 21780, 21791 & 23868 of 2019

2.The Principal Secretary/
Commissioner of Commercial Taxes,
Chepauk,Chennai-5 .. 2nd Respondant in all Cases

Common Prayer:-

Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records on the file of the 1st respondent in TIN/33655920226/12-13 dated 13.2.2020, TIN/33625920776/2011-12 dated 20.2.2020, TIN/33625920776/2012-13 dated 14.2.2020,, TIN/33625920776/2013-14 dated 20.2.2020, TNVAT/33365922665/2013-14 dated 09.03.2018, TNVAT/33365922665/2014-15 dated 09.03.2018, TIN/33425840279/13-14 dated 22.8.2019, TIN/33425840279/14-15 dated 22.8.2019, TIN/33625840557/13-14 dated 22.08.2019 and TIN.No.33625840557/15-16 dated 30-09-2019 respectively and quash the same as illegal, invalid and against the principles of Natural Justice.

For Petitioner .. Mr.A.Chandrasekaran, in all Cases)

For Respondants .. Mr.A.Prakash,
Additional Government Pleader
(in all Cases)

COMMON ORDER

The petitioners have filed these Writ Petitions challenging the impugned assessment orders for the following assessment years.

Sl. No.	Writ Petition No.	Petitioner's Name	Assessment year	Impugned order date
1	W.P.(MD)No.5998/2020	S.Kanagasabai	2012-2013	13.02.2020
2	W.P.(MD)No.15464/2020	Chandra Traders	2011-2012	20.02.2020
3	W.P.(MD)No.15469/2020	Chandra Traders	2012-2013	14.02.2020
4	W.P.(MD)No.15473/2020	Chandra Traders	2013-2014	20.02.2020
5	W.P.(MD)No.7685/2018	Chandra Dhall Mill	2013-2014	09.03.2018
6	W.P.(MD)No.7686/2018	Chandra Dhall Mill	2014-2015	09.03.2018
7	W.P.(MD)No.21777/2019	K.K.Gurusamy & Co.,	2013-2014	22.08.2019
8	W.P.(MD)No.21780 of 2019	K.K.Gurusamy & Co.,	2014-2015	22.08.2019
9	W.P.(MD)No.21791 of 2019	K.Guru & Co.,	2013-2014	22.08.2019
10	W.P.(MD)No.23868 of 2019	K.Guru & Co.,	2015-2016	30.09.2019

2.The issue in these Writ Petitions on merits pertains to levy of purchase tax on the purchase made by the petitioners under the provisions of the erstwhile Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as ''the TNVAT Act'']. The learned counsel for the petitioners would submit that the issue was dealt with at length by this Court in the case of **Sunrise Foods Private Limited, Erode vs. The Assistant Commissioner (CT) (FAC), Erode,** [W.P.Nos.21982 to 21987 of 2016, dated 19.05.2020].

3.The learned counsel for the petitioners submits the law under the subject was discussed at length by the Writ Court in **Sunrise Foods Private Limited case** [supra]. It is submitted that the said order was taken on appeal before the Division Bench of this Court in **W.A.No.2549 of 2021 etc. batch, dated 06.10.2021.** The Division Bench of this Court has set aside the order, but without interfering with the discussion of the law. It is further submitted the Division Bench of this Court has remanded the cases back to the Assessing Officer for a fresh decision on merits and in accordance with law without being influenced by any of the observations made in the said order or in the report or proceedings of the Enforcement Wing Officials, and afford an opportunity of personal hearing to M/s.Sunrise Foods Private Limited, Erode.

4.The learned counsel for the petitioners would also place reliance on an order of the learned Single Judge of this Court in **W.P.No.2565 of 2022 etc. batch, dated 17.02.2022 [M/s.T.N.C.Santhosh vs. The Commissioner of Commercial Taxes, Chennai and four others].** In this connection, the learned counsel for the petitioners has also drawn the attention to a stand taken by the Commercial Taxes Department, wherein, even after the order of the Division Bench of this Court in W.A.No.2549 of 2021 etc. batch was passed, the stand of the respondent Department was that what has been stated in M/s.Sunrise Private Limited case [supra] was only reproduction of the legal position and therefore, independently based on the said legal position, the Assessing Officer would consider the issue and pass orders, provided the petitioners co-operate with the Assessing Authority, by producing necessary documents needed in respect of their cases that their turn over is less than Rs.300 Crores within the time limit and a date for personal hearing and for production of documents was fixed by the Court. It is, therefore, submitted notwithstanding the fact that the order in M/s.Sunrise Foods Private Limited has been set aside, the stand of the respondent Department also appears to be in consonance with the order passed in M/s.Sunrise Foods Private Limited case [supra]. Therefore, the present cases may also be remitted back to the respondent.

5. Opposing the prayer, the learned Additional Government Pleader for the respondents would submit that the petitioners have alternate remedy before the appellate Commissioner and therefore, the Writ Petitions are devoid of merits. It is submitted that the

decision of the Writ Court in M/s.Sunrise Foods Private Limited [supra] has been set aside with a direction to the Assessing Officer to decide the issue afresh independently. It is submitted that in all the impugned orders, the first respondent has passed the assessment orders independently. Therefore, there is no merit in the contentions of the petitioners in these Writ Petitions.

6.I have heard the learned counsel for the petitioners and the learned Additional Government Pleader for the respondents.

7.The impugned order has been passed before the order was passed in **Sunrise Foods Private Limited, Erode vs. The Assistant Commissioner (CT) (FAC), Erode** [W.P.Nos.21982 to 21987 of 2016] on 19.05.2020. However, that order has been set aside by the Division Bench of this Court in W.A.No.2549 of 2021 etc. batch, vide its judgment dated 06.10.2021. The petitioner has an alternate remedy by way of appeal. The petitioners have not made out a case for quashing the impugned orders for being remitted back to the first respondent to pass a fresh order in the *de novo* proceedings. Their only plea appears to be financial hardship. However, such a plea cannot be considered for testing correctness of the impugned orders.

8.The issue relating to levy of purchase tax therefore has to be decided through the appellate remedy prescribed under the TNVAT Act. If any adverse orders are passed by the Appellate Commissioner, the petitioners have to take up the issue before the Tribunal and thereafter, before this Court, by way of Tax Cases.

9.In the light of the above, I am inclined to dismiss the Writ Petitions with liberty to the petitioners to file statutory appeals before the appellate authority within a period of 30 days from the date of receipt of a copy of this order. The appellate authority shall dispose the appeals on merits and in accordance with law within a period of six months from the date of receipt of this order. Accordingly, these Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Smn2

To

1.The State Tax Officer (ST),
Tuticorin - 3 Assessment Circle,
282, North Beach Road, Tuticorin - 628 001.

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

3.The Assistant Commissioner (ST)
Tuticorin-2, Assessment Circle,
282 North Beach Road,
Tuticorin-628 001

4.The Commercial Tax Officer(Addl) (ST)
Tuticorin III

COPY TO:

The Section Officer, E.R.Section,
Madurai Bench of Madras High Court, Madurai.
(to return the original impugned orders to the learned counsel for the petitioners after substituting attesting photocopies of the same.)

+10 CC to M/s.A.CHANDRASEKARAN, Advocate (SR-11826[F] dated 14/03/2022)

+1. CC to M/S.Government Pleader SR.No.12223, SR.No.12224, SR.No.12227, SR.No.12228, SR.No.12208 to SR.No.12210, SR.No.12261

Common order in
WP (MD) Nos.5998, 15464, 15469 & 15473 of 2020,
7685 & 7686 of 2018,
21777, 21780, 21791 & 23868 of 2019
11.03.2022

RD(29.03.2022) 5P 17C