IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.03.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.11280, 11281 & 11282 of 2009

Velan Waste Paper Mart,
represented by its Partner
R.Santhanakrishnan
2-C, First Main Road,
Shastri Nagar, Adyar,
Chennai – 600 020. ... Petitioner in W.P.No.11280 of 2009

Velan Kraft House (P) Ltd.,
represented by its Managing Director
R.Santhanakrishnan
2-C, First Main Road,
Shastri Nagar, Adyar,
Chennai – 600 020. ... Petitioner in W.P.No.11281 of 2009

Vignesh & Co.,
represented by its Mandate Holder
R.Santhanakrishnan
9, V.O.C. Main Street,
Kodambakkam,
Chennai – 600 024. ... Petitioner in W.P.No.11282 of 2009

Vs

1.Assistant Commissioner (CT),
Adyar I Assessment Circle,
46, Greenways Road,
Chennai – 600 028.

2.The State of Tamil Nadu,
represented by the
Secretary to Government,
Department of Commercial Taxes
and Religious Endowments,
Fort St.George,
Chennai – 600 009.
... Respondents in W.P.Nos.11280 & 11281 of 2009

1.Assistant Commissioner (CT),
Saligramam Assessment Circle,
Chennai.

2.The State of Tamil Nadu,
represented by the
Secretary to Government,
Department of Commercial Taxes
and Religious Endowments,
Fort St.George,
Chennai – 600 009. ... Respondents in W.P.No.11282 of 2009

PRAYER in W.P.No.11280 of 2009: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the First Respondent herein to refund the amount of tax paid under the Tamil Nadu General Sales Tax Act, 1959 on the last purchase of waste paper and waste paper board for the period from 17.6.2000 to 21.7.2006 as per G.O.Ms.No.198 CT & R (B2) dated 19.12.2007.

PRAYER in W.P.No.11281 of 2009: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the First Respondent herein to refund the amount of tax paid under the Tamil Nadu General Sales Tax Act, 1959 on the last purchase of waste paper and waste paper board for the period from 16.6.2000 to 21.7.2006 as per G.O.Ms.No.198 CT & R (B2) dated 19.12.2007.

PRAYER in W.P.No.11282 of 2009: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the First Respondent herein to refund the amount of tax paid under the Tamil Nadu General Sales Tax Act, 1959 on the last purchase of waste paper and waste paper board for the period from 16.6.2000 to 21.7.2006 as per G.O.Ms.No.198 CT & R (B2) dated 19.12.2007.

(In all W.P.'s)
For Petitioner : Mr.U.Sriram
for Mr.N.Inbarajan

For Respondents : Mr.V.Prashanth Kiran
Government Advocate

COMMON ORDER

These three writ petitions seek a mandamus directing the first respondent, being the Assistant Commissioner, Commercial Taxes to refund the amount of tax paid under the Tamil Nadu General Sales Tax Act, 1959 and the last purchase of waste paper and waste paper board from 17.06.2000 to 21.07.2006 and from 16.6.2000 to 21.7.2006 as per G.O.Ms.No.198 CT & R (B2) dated 19.12.2007.

2.Though the petitioners have sought a mandamus simplicitor and have not challenged the Notification itself, they would stand to benefit from an order passed by the Division Bench in WP.Nos.36170 of 2007 and batch, dated 21.12.2022 wherein the aforesaid G.O. came to be declared as invalid and in excess of the powers conferred in the State Government under the applicable provisions under the Tamil Nadu General Sales Tax Act, 1959 and Tamil Nadu Value Added Tax Act, 2006.

3.Learned Government Advocate draws attention to paragraph 21 of the order of the Division Bench stating that the refund would be subject to the petitioners satisfying the test of unjust enrichment. However, this would be inapplicable and unnecessary in the present case, since the petitioners have specifically averred in affidavit that they have been assessed for the periods upto 2004-05 and purchase tax has been collected for them for the aforesaid periods, both under TNGST as well as CST Acts.

4.The petitioners have also made a representations on 23.01.2009, a copy of which is placed along with the writ petitions, wherein the details of the payment of purchase tax has been set out in the penultimate paragraph. No counter has been filed controverting the statements in the affidavit and hence, the tabulation is taken to be correct.

5.Thus, there is no necessity to subject these petitioners to the test of unjust enrichment and mandamus as sought for is issued. In light of G.O.Ms.No.198 CT & R (B2) dated 19.12.2007 having been quashed by the Division Bench, the petitioners are entitled to the refund of the taxes paid and mandamus is issued to R1 to quantify the amounts and pay over the same as per the representations dated 23.01.2009 within a period of six (6) weeks from the date of receipt of a copy of this order.

6.These writ petitions are allowed. No costs.

20.03.2023

vs
Index : Yes / No
Speaking Order
Neutral Citation : Yes

To

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2.The State of Tamil Nadu,
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Dr.ANITA SUMANTH,J.

vs

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