IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2024

CORAM :

THE HON'BLE DR. JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

W.P.No.27951 of 2003

1.M/s.Natural Aroma Exports,
rep. by its Proprietor Ashish Kapoor,
P.O. Mkrand Nagar,
Near Kannauj City Railway Station,
Kannauj – 209 726,
Uttar Pradesh.

2.M/s.Malayagiri Sandalwood Oil Distillery,
rep. by its Partner Virendra Kumar Tandon,
No.413, Plaza Kalpana,
24/147-A, Birhana Road,
Kanpur-208 001,
Uttar Pradesh.

3.M/s.Malayagiri Essential Oil Distillers,
rep. by its Partner Virendra Kumar Tandon,
No.413, Plaza Kalpana,
24/147-A, Birhana Road,
Kanpur-208 001,
Uttar Pradesh.

4.M/s.Devi Charan Misra & Sons,
rep. by its Partner Jitendra Kumar,
41, Block "O", Subzi Mandi,
Kidwai Nagar,
Kanpur-208 023, Uttar Pradesh.

5.M/s.Munnalal Sons & Co. (Perfumers) Private Limited,

rep. by its Director Rajesh Pathak,
Hina Building, Po. Box No.16,
Kannauj (U.P.) - 209 725.

6.Indian Fragrances & Chemical Works,
rep. by its Proprietor K.N.Kapoor,
G.T. Road,
P.O. Makarand Nagar,
Kannuj, (U.P.)

7.M/s.Pragati Aroma Oil Distillers Private Limited,
rep. by its Director Pushpraj Jain,
Deedarganj (Chhipatti),
Kannauj – 209 725,
Uttar Pradesh.

8.M/s.Surya Vinayak Industries Limited,
rep. by its Director Sanjay Jain,
Zone-H-4/5, Plot No.55,
Suvindha Kunj, Pitampuram,
Delhi-110 034.

9.M/s.Laxmi Impex,
rep. by its Partner Vijayendra Gupta,
No.19, Tarun Enclave, Pitampura,
Delhi – 110 085.

10.M/s.Siddhi Vinayak Aromatics Pvt. Ltd.,
rep. by its Director Rajiv Jain,
D-259, Ashok Vihar,
Phase-I, New Delhi-110 052.

11.M/s.Allied Perfumers Pvt. Ltd.,
rep. by its Director Sanjay Jain,
B-7/218, Sector-4,
Rohini, Delhi-110 005.

12.Jiwan International,
rep. by its Proprietor Anil Kumar Gadodia,
882-A, Kedar Building,
Ghanta Ghar, Old Subzi Mandi,
Delhi-110 007.

13.M/s.Aisha International,
rep. by its Proprietrix Harmeet Kaur,
1307-9, Hemkunt Chambers,
89, Nehru Place,
New Delhi-110 019.

14.Essgee International,
rep. by its Managing Partner Gurdeep Singh Chawla,
1307-9, 13th Floor,
Hemkunt Chambers, 89, Nehru Place,
New Delhi-110 019.

15.M/s.Naresh International,
rep. by its Partner Naresh Chand,
497, Katra Ishwar Bhavan,
Khari Baoli,
Delhi-110 006. .. Petitioners

Vs

1.Union of India,
rep. by its Secretary,
Ministry of Finance,
North Block,
New Delhi-110 001.

2.The Special Commissioner and
Commissioner of Commercial Taxes,
Chepauk,
Chennai-600 005. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus calling for the records of the second respondent in Lr.No.Acts Cell-IV/48623/2003, dated 24.7.2003 and quash the same in so far as the petitioners are concerned and consequently direct the second respondent and his subordinates to treat the sale of sandalwood by the District Forest Officers in the State of Tamil Nadu to the petitioners who are dealers registered outside the State of Tamil Nadu as inter-state sale within the meaning of Section 3 read with Section 8(i) of the Central Sales Tax Act subject to production of Form-C and other relevant documents.

For the Petitioners	:	Ms.C.Uma for M/s.L.S.M.Hasan Fizal & Gladys Daniel
For the Respondents	:	Mr.T.N.C.Kaushik Addl. Government Pleader for respondent No.2
	:	R1 – Service awaited

ORDER

(Order of the Court was made by *Dr.Anita Sumanth, J.*)

In this writ petition, the petitioners, all carrying on business in sandalwood distillation and related products had participated in the auction sales conducted by the District Forest Officers in Tamil Nadu for auction of sandalwood. They challenge Circular dated 24.7.2003 issued by the Commissioner of Commercial Taxes to the effect that the purchases in the auction sales constitute inter-state sales in terms of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act') and in view of the Madras High Court's decision dated 23.8.2001 in the case of *W.A.Shah Enterprises (P) Limited v. District Forest Officer and others,* (129 STC 299).

2. Much water has flown under the bridge since the time of the issuance of the impugned Circular, as the issue has been elaborately dealt with by the Apex Court in the case of *Malayagiri Sandalwood Oil Distillery v. Special Commissioner and Commissioner of Commercial Taxes and others in* (Civil Appeal No.2421 of 2006 and connected cases, dated 17.7.2014). Those appeals came to be closed permitting all the parties, including the District Forest Officer, to participate in the assessments before the assessing authority and produce all relevant materials to demonstrate that the transactions constituted inter-state sales and not domestic sales.

3. Mr.T.N.C.Kaushik, learned Additional Government Pleader, also circulates a copy of a common order of this Court made in W.P.Nos.28969, 28974, 29283 of 2019, 4869 and 4874 of 2020, dated 27.9.2022, where four of the writ petitioners who are parties to the present writ petition i.e. Pragathi Aroma Oil Distillers Private Limited, Malayagiri Sandal Wood Oil Distillery, Natural Aroma Exports and Malayagiri Essential Oil Distillers, are also parties.

4. The prayer in W.P.Nos.28969, 28974 & 29283 of 2019 was to quash the orders passed in Roc.Nos.191/2019/A1, 189/2019/A1, 190/2019/A1 dated 25.06.2019 by the Appellate Deputy Commissioner (ST), Erode, as they are being passed in violation of the principles of natural justice and contrary to the law laid down by the Hon'ble Apex Court in the petitioners' own case and direct him to pass orders in light of the direction of the Hon'ble Apex Court in Civil Appeal Nos.962 of 2006 (batch cases) order dated 17.07.2014 in the very same issue of the petitioners' case within a stipulated time.

5. The prayer in W.P.Nos.4869 & 4874 of 2020 was to quash the orders passed in Roc.Nos.1627/2019/A1(1) & 1627/2019/A1(2) dated 26.11.2019 by the 3rd respondent therein as they are being passed in

violation of the principles of natural justice and contrary to the law laid down by the Hon'ble Apex Court in the petitioners' own case and direct him to pass orders in light of the direction of the Hon'ble Apex Court in Civil Appeal Nos.962 of 2006 (batch cases) order dated 17.07.2014 in the very same issue of the petitioners' case within a stipulated time.

6. By order dated 27.09.2022, one of us (*Dr.Anita Sumanth, J.*) disposed of the writ petitions, based on the ratio of the judgment of the Apex Court in the case of *Malayagiri Sandalwood Oil* Distillery (supra). Liberty was also granted to the petitioners to challenge the adverse assessments. The operative portion of the order is extracted hereunder:

> *"Read this order in conjunction with a series of orders that have been passed in this matter, particularly, orders dated 12.08.2021 and 07.07.2022 that read as follows:*
>
> *12.08.2021:*
>
> *"Mr.NRR Arun Natarajan, learned Government Advocate states that there is a conflict in his appearing for R1/the District Forest Officer. Registry is directed to delete his name for R1 and print the name of the District Forest Officer in anticipation of a Government Advocate entering appearance prior to next date of hearing.*
>
> *2. Let the Assessing Authority, Commercial Tax Department, before whom returns have been filed by the District Forest Officer on*

> *05.01.2021, in gross violation of a specific direction to them to file their returns on or before 12.11.2019 by my order dated 05.11.2019, pass orders of assessment on the returns after hearing the District Forest Officer as well as the petitioners within a period of eight weeks from today. For this purpose, the District Forest Officer as well as the petitioners shall appear before the Assessing Authority, Commercial Taxes Department on Monday, the 23rd of August, 2021 at 10:30 a.m. without expecting any further notice in this regard.*
>
> *3.List these matters on 25.10.2021 for production of orders."*

07.07.2022:

> *"Heard Mrs.C.Sangamithirai, learned Special Government Pleader for R3 and Mr.C.Harsha Raj, learned Additional Government Pleader for R1 & R2 being the Commercial Taxes Authorities.*
>
> *2.Learned Additional Government Pleader for R1 & R2 confirms that the petitioner has received the particulars relating to the payment of 2% tax. All that remains is the completion of assessment taking note of the payments made by the petitioner.*
>
> *3.Let this process be done within a period of four (4) weeks from today.*
>
> *4.List on 25.08.2022 as a last opportunity for completion of the assessment. No extension of time will be granted, seeing as Form-M was furnished to them as early as on 05.01.2021."*

2.Since the direction on 07.07.2022 for completion of assessment as a final opportunity was not complied, the respondents were put to terms and the matter was listed today for production of orders. Costs are stated to have been remitted under cost memo dated 27.09.2022 and an order of assessment dated

26.09.2022 has been passed, a copy of which is placed on record.

3.Learned counsel for the petitioner would seek leave to challenge the same since it is adverse to the petitioner and they are at liberty to do so.

4.Learned Special Government Pleader who appears for the District Forest Officer will ensure that the bank guarantees that have been furnished by the petitioners will be returned to them within a period of one(1) week from today to enable remittance of pre-deposit in time for filing of statutory appeals.

5.These writ petitions are disposed. No costs. Consequently, connected miscellaneous petitions are closed."

7. In light of the trajectory that the matters have taken as recorded above, learned counsel for the petitioner states that the petitioners do not wish to pursue the challenge to the order of the Special Commissioner dated 24.07.2003. This writ petition hence stands dismissed. There shall be no order as to costs.

(A.S.M., J.) (G.A.M., J.)
19.08.2024

Index : Yes/No
NC : Yes
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To

1.The Secretary,
Union of India,
Ministry of Finance,
North Block,
New Delhi-110 001.

2.The Special Commissioner and
Commissioner of Commercial Taxes,
Chepauk,
Chennai-600 005.

DR.ANITA SUMANTH, J.
AND
G.ARUL MURUGAN, J.

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W.P.No.27951 of 2003

19.08.2024