IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.Nos.15419 & 15420 of 2009

Prime Textiles Limited,
(formerly known as Asher Textiles (P) Ltd.,)
represented by its Director
B.K.Srinivasaragavan
110, Avanashi Road,
Gandhinagar P.O.
Tirupur – 641 603. ... Petitioner in both WPs

vs

1.The Additional Deputy Commercial Tax Officer,
Tirupur (North),
Tirupur.

2.The Appellate Assistant Commissioner (CT),
Pollachi.

3.The Tamil Nadu Sales Tax Appellate Tribunal,
(Additional Bench),
represented by its Secretary
Dr.Balasundaram Road,
Coimbatore – 641 018.

4.The State of Tamil Nadu,
represented by the Deputy Commissioner (CT),
Coimbatore. .. Respondents in both WPs

Prayer in WP.No.15419 of 2009: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus to call for the records on the files of the Third Respondent herein in C.T.M.P.No.29/2008 in C.T.S.A.No.102/2005 dated 29.4.2009, quash the same and direct the Third Respondent to rehear and dispose C.T.M.P.No.29/2008 in C.T.S.A.No.102/2005 afresh.

Prayer in WP.No.15420 of 2009: Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorari to call for the records on the files of the Third Respondent herein in C.T.S.A.No.102/2005 dated 6.2.2008 and quash the same.

(In both WPs)

For Petitioner : Mr.K.A.Parthasarathy
for Mr.N.Inbarajan

For Respondents: No Appearance

COMMON ORDER

(Order of the Court was made by Dr.ANITA SUMANTH.,J)

The issue that arises for consideration in these writ petitions is covered by a judgment of the Hon'ble Supreme Court in *Commercial Tax Officer and Others v. State Bank of India and others* [(2017) 97 VST 1 (SC)].

2. The question relates to whether replenishment licences/exim scrips would be considered as 'goods' on surrender to the concerned authority.

3. The Supreme Court has held that in circumstances when the

utility of the replenishment/exim scrips have outlived their utility, the licences/scrips cease to be marketable instruments and are rendered '*a scrap of paper without any innate market value'*. In such circumstances, any premium received for the surrender cannot be taxed on the hands of the petitioner as turnover liable to tax under the provisions of the VAT Act. The relevant portion of the judgment supra, is extracted below:

> *"33. Thus analysed, the replenishment licences or Exim scrips would, therefore, be "goods", and when they are transferred or assigned by the holder/owner to a third person for consideration, they would attract sale tax. However, the position would be different when replenishment licences or Exim scrips are returned to the grantor or the sovereign authority for cancellation or extinction. In this process, as and when the goods are presented, the replenishment licence or Exim scrip is cancelled and ceases to be a marketable instrument. It becomes a scrap of paper without any innate market value. The SBI, when it took the said instruments as an agent of the RBI did not hold or purchase any goods. It was merely acting as per the directions of the RBI, as its agent and as a participant in the process of cancellation, to ensure that the replenishment licences or Exim scrips were no longer transferred. The intent and purpose was not to purchase goods in the form of replenishment licences or Exim scrips, but to nullify them. The said purpose and objective is the admitted position. The object was to mop up and remove the replenishment licences or Exim scrips from the market.*
>
> *34. Be it noted that the initial issue or grant of scrips is not treated as transfer of title or*

> *ownership in the goods. Therefore, as a natural corollary, it must follow when the RBI acquires and seeks the return of replenishment licences or Exim scrips with the intention to cancel and destroy them, the replenishment licences or Exim scrips would not be treated as marketable commodity purchased by the grantor. Further, the SBI is an agent of the RBI, the principal. The Exim scrips or replenishment licences were not "goods" which were purchased by them. The intent and purpose was not to purchase the replenishment licences because the scheme was to extinguish the right granted by issue of replenishment licences. The "ownership" in the goods was never transferred or assigned to the SBI.*
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> *35. In view of the preceding analysis, the other issues and questions, including the question whether the aforesaid exercise of procuring and cancelling replenishment licences or Exim scrips is "business" within the meaning of the Act, need not be decided. The facts of the case at hand has its distinctive features and, therefore, we unhesitatingly concur with the view of the High Court that the SBI was not liable to levy of purchase tax under the Act."*

4. Hence, the impugned orders of the Tribunal dated dated 29.4.2009 and 06.02.2008 are quashed and these writ petitions are allowed. No costs.

[A.S.M., J] [G.A.M., J]
24.10.2024

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

To

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3.The Secretary,
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