IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.08.2024

CORAM

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

W.P.Nos.37631, 37632 of 2005, 2441 of 2006, 9082 to 9085 of 2004 and 28844 of 2004
& WMP No.32203, 32211 , 32212, 32218, 32170, 32177, 32158 of 2022 & WP.MP.No.35026 of 2004

W.P.No.37631 of 2005:

Starlog Enterprises Ltd,
Chennai Harbour Premises,
Chennai – 600 001.
(amended vide this order)

... Petitioner

Vs

1. The Commercial Tax Officer,
   Harbour I Circle,
   Kuralagam Annexe,
   Chennai – 600 108.

2. Madras Port Trust,
   represented by the
   Chief Mechanical Engineer,
   Rajaji Salai, Chennai – 600 001. ... Respondents

PRAYER in W.P.No.37631 of 2005: This Petition came to be numbered by transfer of O.P.No.720 of 2002 from the file of the Tamil Nadu Taxation Special Tribunal, Chennai under Section 7 of the Tamil Nadu Act 42 of 1992 after abolition of the Tribunal in 2004 praying this Court to call for the records on the files of the first respondent herein TNGST/0000448/99-2000 dated 22.10.2001, and quash the same as illegal, or pass such further or other orders as may deem fit.

In all W.P.'s & WMP.'s
For Petitioner : Mr.S.K.Hari Narayanan
for Mr.S.Santhosh Ukkur
For Respondent : Mr.V.Prashanth Kiran
Government Advocate

C O M M O N O R D E R

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

WMP Nos. 32203, 32211 , 32212, 32218, 32170, 32177, 32158 of 2022 seeking amendment of the name of the petitioner to 'Starlog Enterprises Ltd.' in place of 'ABG Heavy Industries Ltd.' are ordered.

2. W.P.No.28844 of 2004 is listed under a special list today.

3. This is a batch of eight (8) Writ Petitions relating to assessments framed under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (‘Act’) for the periods 1996-97, 1997-98, 1998-1999, 1999-2000, 2000-01, 2001-02 and 2002-03.

4. The details of the writ petitions are set out below:

Writ Petition No.	***Tax Assessment Years***	***Proceedings of commercial tax officer***	***O.P. Number***

		under challenge	
W.P.No.37631/2005	*(i) TNGST 1999 -2000* *(ii) TNGST 2000 - 2001*	*(i) To Quash the Assessment Proceedings of the Commercial Tax Officer in TNGST NO.448/1999-2000 dated 22-10- 2001.* *(ii) To Quash the Assessment Proceedings of the Commercial Tax Officer in TNGST NO.448/2000-2001 dated 22-10- 2001*	*720 of 2002*
W.P.No.37632/2005	*(i) TNGST 1999 -2000* *(ii) TNGST 2000 - 2001*	*(i) To Quash the Assessment Proceedings of the Commercial Tax Officer in TNGST NO.448/1999-2000 dated 22-10- 2001.* *(ii) To Quash the Assessment Proceedings of the Commercial Tax Officer in TNGST NO.448/2000-2001 dated 22-10- 2001*	*721 of 2002*
W.P.No.2441/2006	*TNGST 2001 - 2002*	*To Quash the Assessment Proceedings of the Commercial Tax Officer in TNGST NO.448/2001-2002 dated 19-11-2003.*	*182 of 2004*
W.P.No.9082/2004	*TNGST 1996-97*	*To quash the. Assessment proceedings of Commercial Tax Officer in TNGST NO. 448/96-97 dated 10-03-2004 and To Grant Stay of All further Proceedings.*	*Nil*
W.P.No.9083/2004	*TNGST 1997-98*	*To quash the Assessment proceedings of Commercial Tax Officer in TNGST NO.448/97- 98 dated 10-03-2004*	*Nil*
W.P.No.9084/2004	*TNGST 1998-99*	*To quash the Assessment proceedings of Commercial Tax Officer in TNGST NO.448/97- 98*	*Nil*

		dated 10-03-2004	
W.P.No.9085/2004	*TNGST 2001 - 2002*	*To quash the Assessment proceedings of Commercial Tax Officer in TNGST NO.448/97- 98 dated 10-03-2004*	*Nil*
W.P.No.28844/2004	*TNGST 2002 - 2003*	*To quash the Assessment proceedings of Commercial Tax Officer in TNGST NO.448/2002 2003 dated 12-07-2004*	*Nil*

5. The brief facts, common to all Writ Petitions, are that the petitioner is a dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act'). It had entered into an agreement with Madras Port Trust for hiring of cranes. The turnover from the transaction of hire was the subject matter of assessments for the periods 1996-97, 1997-98 and 1998-99, that were challenged before the Appellate Assistant Commissioner (AAC) successfully, the same having been set aside by the AAC, on 04.09.2000.

6. However, the Sales Tax Appellate Tribunal (STAT/Tribunal) had, in the appeals preferred by the Revenue, reversed the orders of the AAC. The petitioner approached the Special Tribunal and the Special Tribunal, vide its order dated 11.07.2003, decided adverse to the petitioner on the aspect of levy of tax although the incidence of penalty was reduced. The petitioner states that a revision petition was filed before the Tribunal on 23.12.2003, the fate of which is unknown.

7. For the subsequent periods i.e., 1999-2000 and 2000-2001, assessments had been made on 22.10.2001 adverse to the petitioner that had been challenged in first appeal before the AAC on 19.11.2001. The appeals were returned by the office of the AAC on 04.12.2001 for want of statutory pre-deposit. Hence these writ petitions.

8. The issue that arises for decision in all matters hinges upon a determination of the situs of the transactions qua the parties. This would involve the interpretation of contracts which we are not inclined to go into in a Writ Petition. The petitioner had rightly pursued the matters before the appellate authorities and Original petition Nos.720 and 721 of 2002 were filed before the Tribunal. Post abolition of the Tribunals, the OPs have been transferred and re-numbered as W.P.Nos.37631 and 37632 of 2004.

9.At paragraph 23 of the affidavit filed in support of W.P.Nos.37631 and 37632 of 2005, the petitioner states as follows:

> *23. The petitioners do not have any other effective alternate remedy. Though an appeal could have been filed under Section 31, the direction of pre-deposit was plainly onerous. In the very case, inspite of the holding in 119 STC 82 (SC) (20th Century Finance Corporation Limited vs. State of Maharashtra), the petitioners were subjected to an arbitrary and illegal levy placing reliance upon the judgment of the Hon'ble Special Tribunal reported in 113 STC 403 (Upasana Finance Ltd. V. State of Tamil Nadu), which is not good law, after the judgment of the apex Court. Besides the issue as to the time and place of agreement has to be decided in the presence of the Madras Port*

Trust which has been impleaded as the Second Respondent herein. Further the very liability is being decided in the context of cases filed against S.T.A.Nos.156, 157 and 460 of 2001 dated 20.12.2001 by this Hon'ble Tribunal. The demand is violative of Articles 14, 265 and 300A of the Constitution of India. The petitioners have no means of paying any part of the sum, being a sick industry.'

10. The only ground raised to maintain the Writ Petitions is financial stringency to make the payment of mandatory, statutory pre-deposit. In our considered view, this is no justification for the institution of present Writ Petitions particularly as the pre-deposit is mandatory. As far as the remaining writ petitions are concerned, there is an averment in some of the affidavits that the petitioners do not have an alternate remedy. Seeing as the impugned orders are orders of assessment, the petitioners could well have challenged the same by way of statutory appeals and the aforesaid statement is thus incorrect.

11. As already noted, the issue on merits relates to the determination of the situs of the transactions inter se the parties which would involve marshalling and appreciation of facts in respect of which a Writ Petition is not the appropriate remedial measure.

12. For the aforesaid reasons, all writ petitions are dismissed, though granting liberty to the petitioner to re-present the appeals which have been returned or file appeals, both within a period of four (4) weeks from date of

receipt of a copy of this order, along with requisite pre-deposit. Such appeals, if filed within the period stipulated above, shall be taken on file by the AAC without reference to limitation but ensuring compliance with all other statutory conditions including payment of pre-deposit. No costs. Connected Miscellaneous Petitions are also dismissed.

(A.S.M.,J) (G.A.M.,J)
08.08.2024

Index:Yes
Speaking order
Neutral Citation: Yes
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