IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.25782 of 2021

M/s.ESSAR Shipping Limited,
Represented by its President and
Chief Executive Officer and
Authorized Representative
Ranjit Singh ... Petitioner

Vs.

1.The Assistant Commissioner of VAT,
Evening Bazaar Assessment Circle,
Wavoo Mansion,
No.48/39, Rajaji Salai,
Chennai – 600 001.

2.The Senior Commercial Tax Officer,
Integrated Commercial Taxes Office Complex,
Survey No.1275/3,
Elephant Gate Bridge Road,
Chennai – 600 003. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the first respondent to refund the amount of Rs.50,00,000/- (Rupees Fifty Lakhs) deposited to the second respondent on 05.10.2006 on the conditional order of this Court to make the stay absolute in W.M.P.No.13082 of 2004 in W.P.No.11159 of 2004 along with statutory interest within a time frame fixed by this Court.

For Petitioner : Mr.J.V.Niranjan
For Respondents : Mr.Haja Nazirudeen
Additional Advocate General-1
Assisted by Mr.G.Nanmaran
Special Government Pleader (Taxes)

ORDER

This Writ Petition is of the year 2021.

2. The petitioner had suffered an adverse order in the hands of the Commercial Tax Officer (FAC), Rattan Bazaar Assessment Circle, Chennai on 26.03.2004.

3. By the aforesaid order, the taxable value of the petitioner was determined at Rs.161,34,23,964/-. Operative Portion of the aforesaid Order reads as under:-

> ""No authority of this Court has been shown on behalf of respondents that there would be no completed transfer of right to use goods unless the goods are delivered. Thus, the delivery of goods cannot constitute a basis for levy of tax on the transfer of right to use any goods. We are, therefore, of the view that where the goods are in existence, the taxable event on the transfer of the right to use goods occurs when a contract is executed between the lessor and the lessee and *situs* of sale of such a deemed sale would be the place where the contract in respect thereof is executed. Thus, where goods to be transferred are available and a written contract is executed between the parties, it is at that point *situs* of taxable event on the transfer of right to use goods would occur and *situs* of sale of such a transaction would be the place where the contract is executed."
>
> So all those objection raised would not survive in the face of the

above legal position. The proposal communicated vide this office RC 859/2002 dated 31.12.02 served by RPAD on 13.2.02 is confirmed and the assessee is finally assessed to tax on a total and a taxable turnover of

1. Lease Rentals received @ 11% on Rs.146,20,21,638.00	: Rs.	16,08,22,380.00
2. Sale of ship @ 11% Rs.9,51,08,400.00	: Rs.	1,04,61,924.00
3.Rentals from water circulation plant @ 11% Rs.5,62,09,248.00	: Rs.	61,83,017.00
4.Sale of assets.		
i) Empty Drums: @11% Rs.7,150.00	: Rs.	787.00
ii) Old Papers: @4% Rs.3,636.00	: Rs.	145.00
iii) Scrapes: @11% Rs.16,892.00	: Rs.	1,858.00
iv) ACC Fridge: @20% Rs.7,000.00	: Rs.	1,400.00
v) Furniture: @11% Rs.50,000.00	: Rs.	5,500.00
Total tax due	: Rs.	17,74,77,011.00
Total tax paid	: Rs.	NIL
Balance	: Rs.	17,74,77,011.00

A notice in form B3 will issue.

Additional tax due: @ 2.5% on Rs.161,34,23,964.00	: Rs.	4,03,35,599.00
Additional tax paid	: Rs.	NIL
Balance	: Rs.	4,03,35,599.00

A notice in form N3 will issue.

Penalty due @ 150% for failure to disclose the turnover & file the returns	: Rs.	32,67,18,915.00
Penalty paid	: Rs.	NIL
Balance	: Rs.	32,67,18,915.00

A notice in form 54 will issue."

4. Aggrieved by the same, the petitioner has filed W.P.No.11159 of 2004. At the time of admission, the petitioner secured an interim order on 23.04.2004 in W.M.P.No.13082 of 2004 in W.P.No.11159 of 2004 and thereafter the aforesaid order was made absolute vide order dated 07.09.2006 subject to the petitioner depositing a sum of Rs.50,00,000/-.

5. The petitioner has also deposited a sum of Rs.50,00,000/- by taking out a Demand Draft drawn on State Bank of India on 05.10.2006 for a sum of Rs.50,00,000/- and handed over the same to the Commercial Tax Officer (FAC), Rattan Bazaar Assessment Circle, Chennai. The Writ Petition was however specifically disposed by an order dated 26.02.2010 along with few other writ petitions of other assessee namely M/s.Chemplast Sanmar Limited. By an Order 26.02.2010, the Court ordered as follows:-

> ***"22. In such circumstances, I do not propose to go into the factual aspect of every case in this batch, suffice to state that the respondent/Department should await the result of the Tax Case (Revisions) pending before this Court in respect of the same issue and not to proceed either with the pre-assessment notices or the assessment order.***
>
> ***In the result, on the ground of judicial discipline and binding nature of judicial hierarchy, these writ petitions are disposed directing the respondent/Department not to proceed***

with the impugned assessment order or the pre-assessment notices, as the case may be, till the Tax Case (Revisions) filed by the State against the order of the Tamil Nadu Sales Tax Appellate Tribunal in S.T.A.Nos.772 to 774 of 2001 are disposed by this Court. It is made clear that after the disposal the Tax Case (Revisions), it is open to the respondent/Department to proceed in accordance with law and based on the order passed in the Tax Case (Revisions). No costs. Consequently, W.P.M.P.No.2656 of 2007 in W.P.No.11159 of 2004, W.P.M.P.No.23311 of 2004 in W.P.No.19375 of 2004 and W.P.M.P.No.6874 of 2005 in W.P.No.6261 of 2005 are closed."

6. Meanwhile in the connected cases, the issue came to be answered in favour of the assessee including the petitioner. The petitioner name has been stated as Essar Shipping Limited in Tax Case (Revision) Nos.184, 1563, 1589 and 1590 of 2006 and W.A.No.1140 of 2010.

7. By an order dated 29.08.2011, ultimately, the Division Bench of this Court after referring to the decisions of the Hon'ble Supreme Court in several cases including that of **20th Century Finance Corporation Limited** Vs. **State of Maharashtra**, [2000] 119 STC 182, had answered the substantial issue in favour of the petitioner and therefore remitted the case back by quashing the Original Assessment Order impugned in the proceeding with a direction to re-do the assessment for the Assessment Year 1997-1998 in the light of the observations contained therein.

8. Operative portion of the order of the Division Bench of this Court dated 29.08.2011 reads as under:-

> ***"76. We are constrained to note herein that except on the above two issues, namely, the transfer of right to use in relation to the time charter and the sale of ships, no arguments are made on other turnover in dispute and considered by the Tribunal in favour of the assessee. In the circumstances, we have considered the above two aspects only and confirm the order of the Tribunal on other aspects. In the result, we dismiss the Tax Case Revisions.***
>
> ***77. As far as Writ Appeal in W.A.No.1140 of 2010 is concerned, the same is as against the order of this Court in W.P.No.11159, 19375 of 2004 and 6261 of 2005. The assessee has preferred the Writ Appeal as against the order in W.P.No.11159 of 2004 relating to the assessment year 1997-98 to quash the order dated 26.3.2004. While disposing of the Writ Petitions, this Court directed the respondent not to proceed with the pre-assessment notice till the Tax Cases filed by the State were disposed of. This Court directed that after disposal of the Tax Case (Revisions), it was open to the Revenue to proceed in accordance with law on the order passed in the Tax Case (Revisions). The assessee has preferred this Writ Appeal, contending that even if the Tax Case (Revisions) are dismissed on merits, the assessment challenged in the Writ Petition would remain, without being quashed or withdrawn, that in the end of all the proceedings, the assessee would be left without a remedy. Thus the disposal of the Writ Petition without quashing the assessment would leave the assessee without a remedy. In the circumstances, the assessee challenges the order of the learned single Judge in not setting aside the order of assessment.***

78. In the light of the order passed by this Court as above, the Writ Appeal in W.A.No.1140 of 2010 stands allowed and the assessment order passed in respect of assessment year 1997-98 stands set aside with a direction to re-do the issue in the light of the observations made by us.

79. In respect of T.C.No.416 of 2006, filed against the order in S.T.A.No.1705 of 2001 by the Revenue, relating to the assessment year 1996-97, it is seen from the records of the Court that the said Tax Case was dismissed for default on 27.11.2009 on account of non-payment of batta and till this date, the said Tax Case had not been restored for consideration on merits.

80. In the result, the Tax Case Revisions stand dismissed and W.A.No.1140 of 2010 stands allowed. No costs. Connected Miscellaneous Petitions are closed."

9. A further appeal by the Department in Special Leave to Appeal (C) C.C.No.22136 of 2015 was also dismissed by the Hon'ble Supreme Court on 04.03.2016 on the ground of delay.

10. Thus, the principle issue stands confirmed. The Assessing Officer ought to have passed the order immediately thereafter after the Hon'ble Supreme Court dismissed the Special Leave to Appeal (C) C.C.No.22136 of 2015 on 04.03.2016. However, the Department took almost three years and thereafter wake up from its long slumber and issued the notice on 10.01.2019, which has

been also replied back by the petitioner on 25.01.2019.

11. The petitioner also sent several representations particularly on 02.09.2019. However nothing further has progressed. Hence this Writ Petition.

12. Opposing the prayer, the learned Additional Advocate General would draw attention to Paragraph 8 of the Counter Affidavit, which reads as under:-

> "8. It is respectfully submitted that the Department filed a Special Leave Petition in CC No.22136 of 2015 which was dismissed on the grounds of delay. By the Court order setting aside the assessment and dismissal of SLP, the dealers represented that they are entitled for refund of Rs.50,00,000.00 [Rupees Fifty Lakhs only]. The assessing authority duly issued a notice dated 10.01.2019 in terms of order in W.A.No.1140 of 2010. The Petitioner had not filed any objection to the notice, whereas they have represented to issue refund of Rs.50,00,000.00 [Rupees Fifty Lakhs only]. The Hon'ble High Court has made observation to re-do the assessment for the assessment year 1997-98 in the light of the observation of the High Court. Hence, concluding the assessment by way of re-doing in the light of the observation of the High Court is necessitated after dismissal of SLP on the ground of delay. Therefore, the petitioner's claim for refund will be considered subject to finalization of assessment order."

13. It is submitted that the petitioner has not cooperated with the Department and therefore the question of refund at this stage cannot be countenanced as orders have to be passed.

14. It is further submitted that the order that was originally passed on 23.04.2004 in W.M.P.No.13082 of 2004 in W.P.No.11159 of 2004 which was made absolute on 07.09.2006 cannot be therefore complied with.

15. There is a long delay on the part of the Commercial Tax Department to re-do the exercise that was contemplated in terms of order dated 29.08.2011 of the Division Bench of this Court in Tax Case (Revision) Nos.184, 1563, 1589 and 1590 of 2006 and W.A.No.1140 of 2010.

16. The delay up to dismissal of Special Leave to Appeal (C) C.C.No.22136 of 2015 on 04.03.2016 can at best be over looked as the Department was pursuing with the appeal before the Hon'ble Supreme Court although there was a delay.

17. However after the dismissal of the Special Leave to Appeal (C) C.C.No.22136 of 2015, the Department should have proceeded to implement the order dated 29.08.2011 in Tax Case (Revision) Nos.184, 1563, 1589 and 1590 of 2006 and W.A.No.1140 of 2010 with alacrity.

18. Therefore, to balance the interest of the petitioner and the respondents, this Court is inclined to pass the following order:-

(1) The respondents shall pass appropriate orders in the light of the observations made in the order dated 29.08.2011 in Tax Case (Revision) Nos.184, 1563, 1589 and 1590 of 2006 and W.A.No.1140 of 2010 within a period of three months from the date of uploading of this order.

(2) It is made clear that the petitioner shall also cooperate with the respondents. It is further made clear in case no orders are passed within such time, the amount of Rs.50,00,000/- that was pre-deposited pursuant to order dated 07.09.2006 shall be refunded forthwith without prejudice to the rights of the petitioner for further interest.

(3) It is made clear that in any case, in case the orders are passed on merits pursuant to order dated 29.08.2011 in Tax Case (Revision) Nos.184, 1563, 1589 and 1590 of 2006 and W.A.No.1140 of 2010, the petitioner shall be entitled for appropriate interest i.e., 9% interest on the pre-deposit of Rs.50,00,000/-.

19. With the above directions, this Writ Petition stands disposed of. No costs.

23.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

arb

To

1.The Assistant Commissioner of VAT,
Evening Bazaar Assessment Circle,
Wavoo Mansion,
No.48/39, Rajaji Salai,
Chennai – 600 001.

2.The Senior Commercial Tax Officer,
Integrated Commercial Taxes Office Complex,
Survey No.1275/3,
Elephant Gate Bridge Road,
Chennai – 600 003.

C.SARAVANAN, J.

arb

W.P.No.25782 of 2021

23.09.2024