BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.04.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.(MD) Nos.9615 to 9621 of 2024
and
W.M.P.(MD) Nos.8717, 8719, 8723, 8740, 8718, 8722 and 8721 of 2024

In W.P.(MD) No.9615 of 2024:

Orkala India Private Limited,
formerly Known as MTR Foods Pvt. Ltd.,
Earlier known as Eastern Codiments Pvt. Ltd.,
represented by its General Manager-Finance,
and Authorised Signatory,
I.V.Vijesh,
No.63/67, SMM Kalyana Mandapam Complex,
Kundrathur High Road,
Porur,
Chennai 602 101. ... Petitioner

/vs./

Assistant Commissioner ST
Theni-1 Assessment Circle,
SIDCO Complex,
Madurai Main Road,
Theni 625 531. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the impugned order of the respondent passed in TIN/33335120734/2009-10 dated 31.01.2024 and quash the same and further direct the respondent to re-do the assessment in accordance with law after providing sufficient opportunity including personal hearing.

For Petitioner : Mr.M.Karthikeyan
For Respondent : Mr.J.K.Jeyaselan
Government Advocate

COMMON ORDER

In all cases, Mr.J.K.Jeyaselan, learned Government Advocate takes notice for the respondent.

2.With the consent of the learned Government Advocate, these writ petitions are being disposed of at the time of admission.

3.In these writ petitions, the petitioner has challenged the impugned assessment orders all dated 31.01.2024. The demand pertains to the assessment years 2009-10 to 2015-16, which were confirmed against the Eastern Condiments Private Limited and stands amalgamated with the petitioner pursuant to the order dated 24.08.2023 by NCLT, Bangalore in CP(CAA) No.42/BB/2022.

4.This is the second round of litigation in respect of the demands for the assessment years 2009-10 to 2015-16 under the provisions of the TNVAT Act, 2006. The petitioner had earlier suffered 7 different assessment orders, which were the subject matter of challenge before this Court in W.P.(MD) Nos.1178 to 1181 of 2017 and 13103, 13642 and 13643 of 2018. There were about 14 issues including the issue relating to payment of purchase tax.

5.By a common order dated 09.03.2021, the learned single Judge followed the views expressed by this Court in ***W.P.Nos.21982 to 21987 of 2016 (Sunrise Foods Private Limited Vs. The Assistant Commissioner (CT) (FAC) Park Road Assessment Circle, Erode) dated 19.05.2020***. Ultimately, by the aforesaid order dated 09.03.2021, the impugned orders passed for the above mentioned assessment years were quashed and the case was remitted back on similar lines as that of the order passed by the Court in W.P.Nos.21982 to 21987 of 2016 (***Sunrise Foods Private Limited Vs. The Assistant Commissioner (CT) (FAC) Park Road Assessment Circle, Erode***) dated 19.05.2020. Operative portion of the said order reads as under:-

> *"4.Respectfully following the aforesaid decision, the order impugned in the writ petitions are quashed. These writ petitions are allowed on the same lines as mentioned above. I make it clear that the issues not dealt with in the aforesaid order are left open and it is open to the petitioner herein to canvass those contentious before the assessing officer. No costs. Consequently, connect miscellaneous petitions are closed."*

6.After the aforesaid order was passed, the Company was amalgamated with MTR Foods Private Limited pursuant to the scheme of amalgamation approved by NCLT, Bangalore vide order dated 24.08.2023. The Company has also undergone a further name change pursuant to the amalgamation and thus, the name of the petitioner Company has been changed into its present name. After said Company, namely M/s.Eastern Condiments Private Limited and was taken over by the new management pursuant to the scheme of amalgamation, the petitioner was called for a personal hearing.

7.Under these circumstances, repeated adjournments have been sought for stating that the records were not immediately traceable and that the petitioner would require further time to make submissions. The personal hearing was also fixed on 04.01.2024, on which date also, the petitioner has requested for adjournment. However, the respondent has proceeded to pass the impugned order confirming the demands pursuant to the remand orders passed by this Court in W.P.(MD) Nos.1178 to 1181 of 2017 and 13103, 13642 and 13643 of 2018 dated 09.03.2021.

8.It is noticed that by the impugned order, the petitioner is now exposed to a tax liability of Rs.18,77,41,529/- towards tax and further, amount of Rs. 26,59,79,314/- towards penalty and in all, a sum of Rs.45,37,20,843/- as detailed below:-

வ.எண்.	விவரம்	வருடம்	வரிப்பாக்கி		
			வரி	தண்டம்	மொத்தம்
1	VAT	2009-2010	249770	374655	624425
2	VAT	2010-2011	2615090	3917130	6232220
3	VAT	2011-2012	3267501	4392117	3799618
4	VAT	2012-2013	5465576	7582110	13047686
5	VAT	2013-2014	91350665	136567941	227918606
6	VAT	2014-2015	82125925	115238359	197364284
7	VAT	2015-2016	2367002	2367002	4734004
					453720843

9.The petitioner has remitted a sum of Rs.2 Crore in good faith on 19.03.2024 by taking a Demand Draft for the aforesaid sum drawn on HDFC Bank vide DD.No.008841. It is noticed that the impugned order is detailed and has been passed in the absence of a proper reply from the petitioner.

10.The fact remains that the petitioner has taken over the business of M/s.Eastern Condiments Private Limited pursuant to the order dated 24.08.2023 passed by NCLT in CP(CAA) No.42/BB/2022. The request of the petitioner for adjournment was reasonable, as the new management has taken over the Company, namely the assessee.

11.Considering the same, this Court is inclined to interfere with the impugned order by quashing the impugned order and by remitting the case for the second time to pass a fresh order on merits and in accordance with law. The petitioner shall file reply not later than 45 days from the date of receipt of a copy of this order. The responded shall pass a fresh order on merits and in accordance with law within a period of 45 days thereafter.

12.It is needless to state that the petitioner shall be heard before fresh order is passed. The petitioner shall co-operate with the respondent by furnishing all the records and documents that may be demanded for passing fresh order. In case, the petitioner fails to co-operate with the respondent, the respondent is at liberty to pass fresh order based on the available material.

13.With the above directions, these Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

18.04.2024

Index : Yes / No
Internet : Yes / No
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To

Assistant Commissioner ST
Theni-1 Assessment Circle,
SIDCO Complex,
Madurai Main Road,
Theni 625 531.

C.SARAVANAN, J.

mm

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