IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.Nos.19820 & 19821 of 2004
and
W.P.M.P.Nos.23831 and 23830 of 2004

Inbios Petroleum (P) Limited,
No.6, East Mada Street,
Saidapet, Chennai 600 015. ... Petitioner in both Writ Petitions

-Versus-

1. The Commercial Tax Officer,
   Adayar-I Assessment Circle,
   Adayar, Chennai 600 020.

2. The Tamil Nadu Taxation Special Tribunal,
   Rep. by its Registrar,
   Second Floor, Singaravelar Maligai,
   Chennai 600 001. ... Respondents in both Writ Petitions

Prayer in W.P.No.19820 of 2004: Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorari, calling for the records of the 1st respondent relating to the order in TNGST/0861669/02-03/03-04 dated 18.11.2003 and to quash the said proceedings as illegal and ultra vires.

Prayer in W.P.No.19821 of 2004: Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Mandamus forbearing the 1st respondent from proceeding any further pursuant to his proceedings in TNGST/0861669/02-03/03-04 dated 18.11.2003 until disposal of O.P.No.1450 of 2003 by the 2nd respondent.

For Petitioner in both Writ Petitions : Mr.N.Inbarajan

For Respondent(s) in both Writ Petitions : Mr.S.Manoharan Sundaram, AGP (T)

COMMON ORDER

Challenging the impugned demand notice of the 1st respondent dated 18.11.2003 in TNGST/0861669/02-03/03-04 for payment of surcharge at 5% of the tax amount already paid, the petitioner has come up with W.P.No.19820 of 2004 and the other writ petition is filed by the petitioner seeking writ of mandamus forbearing the 1st respondent from taking any further action pursuant to the above demand notice until disposal of the petition in O.P.No.1450 of 2003 by the 2nd respondent.

2. The petitioner is a public limited company registered under the Companies Act. The petitioner company is engaged in the business of import and sale of superior kerosene oil. It has got registered its name as dealer under the Tamil Nadu General Sales Tax Act, 1959 and The Central Sales Tax Act, 1956.

3. According to the petitioner, during the period between April 2003 and October 2003, it had received oil on stock transfer basis from its branches situated at Cochin and sold away the same locally within the State of Tamil Nadu and the tax chargeable on the said sales was 25%. While so, the 1st respondent in addition to the tax chargeable at 25%, demanded surcharge of 5% on the sales of superior kerosene oil made by the petitioners during the years 2002-03 and 2003-2004. The petitioner inter alia contended that the 1st respondent did not follow the established procedures and that the impugned notice lacks jurisdiction.

4. Heard Mr.N.Inbarajan, the learned counsel appearing for the petitioner company and Mr.S.Manoharan Sundaram, the learned Additional Government Pleader appearing for the respondents and also perused the records carefully.

5. The levy of surcharge on the sales of superior kerosene oil is put to challenge. Though the petitioner assailed the impugned demand notice for payment of surcharge on many grounds including violation of principles of natural justice and the jurisdiction of the 1st respondent, the issue is no more res integra and in Southern Petro Oils Private Limited v. Commercial Tax Officer, 2010 (2) VST 403 (Mad) , a learned single Judge of this court while rejecting the contention of a dealer that the there cannot be different rate of tax when a commodity is same, held as follows:-

> "67. In the light of the above, the learned counsel submitted that the petitioners are not entitled for any indulgence. In the contrary, their contentions do not stand

scrutiny of law and liable to be rejected.

68. Considering the rival submissions of the parties, the following propositions of law emerges. An Entry by virtue of Section 59(1) made into the schedule will stand in the same footing as entry by virtue of legislative amendment. The attack that a commodity is same and therefore, is liable for the same rate of tax cannot be accepted as it would amount to questioning the legislative policy of the State to tax a particular commodity. In such circumstances, the allegation of discrimination will not arise as legislature had chosen to make an entry into the schedule specifying the commodities under two different heads and so liable for different levies. Even otherwise, as it is already set out, while normal kerosene available under the public distribution system is meant for domestic consumption, whereas SKO is meant for commercial use. The courts have held even by the place where it is sold, commodities are leviable with different rates of levies.

69. When the legislature has consciously made a distinction between the two products, the same cannot be attacked on the ground that they are same products and should receive same percentage of levy of tax. Further, it must be noted that the State Government had come out with a stand that a separate levy of tax was made so as to prevent misuse or black marketing of public distribution commodities.

70. Reliance placed upon the judgement of the Supreme Court in Arya Vaidya Pharmacy case (cited supra) has no application. The said case has been subsequently distinguished in two different cases and explained away in one case (2007 (7) VST 535 (SC)).

Further, the Bureau of Indian Standards (BIS) prescribes criteria for adding chemical for colour quoting is mainly for purpose of standardizing so as to avoid any accusation of adulteration. In such cases, the dealers may avoid facing litigation in supplying adulterated kerosene. Similarly, relying upon the notification under the Essential Commodities Act has no place. So long as the commodity is an essential commodity and

> private marketing system is introduced by the Parliament through a delegated legislative wanted to safeguard the interest of kerosene supply under the public distribution system. Therefore, it cannot be said that the State legislature lacks power in taxing kerosene different from that of SKO or White kerosene oil. The attack of discrimination thus must fall to ground in the light of the above legal precedents as set out above."

6. In the light of the above settled proposition of law, both the writ petitions deserve to be dismissed.

7. In the result, the writ petitions are dismissed. No costs. Consequently , connected WPMPs are closed.

Sd/-
Assistant Registrar(Records)

//True Copy//

Sub Assistant Registrar

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To

1. The Commercial Tax Officer,
   Adayar-I Assessment Circle,
   Adayar, Chennai 600 020.

2. The Registrar,
   Tamil Nadu Taxation Special Tribunal,
   Second Floor, Singaravelar Maligai,
   Chennai 600 001.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.51011
+1cc to the Special Government Pleader(Taxes), S.R.No.50880

Writ Petition
Nos.19820 and 19821 of 2004

GR(CO)
CA(08/10/2015)