IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.24510 to 24513 of 2014 &
connected WMPs

Bharat Petroleum Corporation Limited
[rep. by its Sr. Manager
Finance SS South and Authorised
signatory N.Lakshmi]
.. Petitioner in W.P.Nos.24510 & 24511/2014

Hindustan Petroleum Corporation Limited
[rep. by A.Vinod Kumar, Regional Manager
and Authorised signatory]
.. Petitioner in W.P.Nos.24512 & 24513/2014

vs.

The Deputy Commissioner (CT) 1
Large Tax Payers Unit
Office of the Joint Commissioner (CT), LTU,
34, Durgar Towers, 5th Floor
Marshalls Road, Chenai 600 008.

.. Respondent in W.P.Nos.24510 & 24511/2014

The Deputy Commissioner (CT) -II
Large Tax Payers Unit
Egmore, Chenai 600 008.

.. Respondent in W.P.Nos.24512 & 24513/2014

PRAYER in W.P.Nos.24511 & 24510 of 2016 : Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorarified Mandamus, to call for the records on the files of the respondent herein in TIN/33941021809/2007-08 & 2008-09 dated 13.08.2014, quashing the proceedings of the respondent as illegal and suffering from error of law and without jurisdiction, while directing the respondent to redo the assessment after fresh enquiry.

PRAYER in W.P.Nos.24512 & 24513 of 2016 : Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of writ of certiorarified Mandamus, to call for the records on the files of the respondent herein in TIN/33750540163/2007-08 & 2008-09 dated 31.07.2014, quashing the proceedings of the respondent as illegal and suffering from error of law and without jurisdiction, while directing the respondent to redo the assessment after fresh enquiry.

For Petitioners (in all W.Ps) : Mr.N.Prasad

For Respondents (in all W.Ps) : Mr.S.Kanmani Annamalai Addl.Govt. Pleader

C O M M O N O R D E R

Heard Mr.N.Prasad, learned counsel appearing for the petitioners and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) appearing for the respondent. With the consent of the learned counsel appearing on either side, the Writ Petitions are taken up for disposal.

2. The petitioner Bharat Petroleum Corporation have come forward with W.P.Nos.24510 and 24511 of 2014, challenging the orders of assessment for the years 2007-08 and 2008-09 and the petitioner in other two Writ Petitions viz. Hindustan Petroleum Corporation, have come forward with W.P.Nos.24512 & 24513 of 2014, challenging the orders of assessment for the years 2007-08 and 2008-09.

3.When the case was heard on the earlier occasion i.e. on 11.08.2016, the learned Senior Counsel who appeared for the petitioners submitted that though several points are involved in the Writ Petitions, one major issue pertains to the credit availed by the petitioners with regard to the purchases made by them, which was denied on the ground that the consolidated VAT invoices were issued by the Chennai Petroleum Corporation Ltd (CPCL) during the succeeding month. The petitioners contention is that the credit availed by them for the month in which, the transactions have taken place and consolidated invoice was issued during the succeeding month for accounting purpose. It was the further case of the petitioner that the seller, CPCL, also pays the tax for the relevant month for which the petitioners availed credit. The petitioners seek to substantiate the nature of transactions by producing the Truck invoices. Further, it was pointed out that for the assessment year 2009-10 and 2010-11 in respect of Bharat Petroleum Corporation Limited and for the assessment year 2009-10, in respect of Hindustan Petroleum Corporation Limited, identical transaction was considered by the Assessing Officer and the Assessing Officer took the trouble of examining all the truck invoices and was satisfied that they were raised within the the calender month to which the returns pertain. The petitioner would submit that all the relevant truck invoices are available with the petitioners for the impugned assessment years as well and therefore, they submitted that they should be permitted to submit those documents and a fresh enquiry requires to be conducted.

4.In fact to consider this issue an order was passed by this Court, so that the learned Additional Government Pleader could get instructions in the matter. Today, when the matter is heard, there is no dispute to the fact that the assessment years 2009-10 & 2010-11, in respect of both the Writ Petitioners, identical transactions were examined, truck invoices were taken into consideration and the assessments have been completed. Therefore, this Court is of the view that such procedure should have been adopted for the impugned assessment orders as well, since the petitioners are Public Sector Corporations and the Assessing Officer should definitely take the trouble of verifying the documents that may be produced by them for calculating the correct rate of tax. If such procedure is not resorted to, then though the assessment order would result in financial implications for the petitioners-Corporations, ultimately, that would be against the public interest.

5.Thus, for all the above reason, these Writ Petitions are allowed, the impugned orders are set aside and the matter is remanded to the respondent for fresh consideration. Taking note of the fact that the petitioners are dealers on the file of the Large Tax Payers Unit, the Assessing Officer shall do a thorough exercise, verify the truck invoices and other documents and consider the petitioners objections afresh, take note of the assessment orders for the years 2009-10 and 2010-11 in respect of Bharat Petroleum Corporation Ltd., dated 29.09.2014 and 15.10.2014 and the assessment order for the year 2009-10 in respect of Hindustan Petroleum Corporation Ltd., and redo the assessments in accordance with law, after affording an opportunity of personal hearing to the petitioners. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpa

To

1.The Deputy Commissioner (CT) I
Large Tax Payers Unit
Office of the Joint Commissioner (CT), LTU,
34, Durgar Towers, 5th Floor
Marshalls Road, Chenai 600 008.

2.The Deputy Commissioner (CT) -II
Large Tax Payers Unit
Egmore, Chenai 600 008.

+1cc to Mr.N. Inbarajan, Advocate, S.R.No.56623
+1cc to the Government Pleader, S.R.No.56748

PVS(CO)
EU(04/11/2016)

W.P.Nos.24510 to 24513 of 2014