IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2016

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.39501 to 39505 of 2015 &
M.P.Nos.1 to 1 of 2015

M/s Hindustan Petroleum Corporation Limikted
(Rep. by Mr.A.Vinod Kumar, Regional Manager
and Power of Attorney Holder)
.. Petitioner in all W.Ps

..Vs..

The Deputy Commissioner (CT)-II(FAC)
Large Tax Payers Unit
5th Floor, Duggar Towers
34, Marshalls Road,
Egmore, Chennai 600 008.
.. Respondent in all W.Ps.

Common Prayer:

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorari to call for the records on the file of the files of the respondent herein in CST Nos.58554/1998-99, 1994-95, 1995-96, 1996-1997 and 1997-98 dated 13.11.2015 respectively, and quash the same as illegal due to failure of jurisdiction and contrary to law declared by Courts.

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

For Respondent : Mr.S.Kanmani Annamalai
(in all W.Ps.) Addl. Government Pleader

C O M M O N O R D E R

Heard Mr.N.Prasad, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice on behalf of the respondent. By consent, the Writ Petitions are taken up for final disposal.

2.The petitioner is a Public Sector Oil Marketing Corporation, engaged in the sale of petroleum products and they are the assessee on the file of the respondent under the provisions Central Sales Tax Act, 1956 [CST Act] and the erstwhile Tamil Nadu General Sales Tax Act, 1956 [TNGST Act]. In these Writ Petitions, the petitioner has challenged the orders passed by the respondent, disallowing the stock transfer effected by the petitioner in their depot Tada, which is in the State of Andhra Pradesh.

3.The petitioner had stock transferred High Speed Diesel and Motor spirit to their Depot at Tada, from where it has been distributed to its authorized dealers in Andhra Pradesh. The petitioner claim those transactions as stock transfer by filing Form-F Declarations. The Enforcement Wing Officials inspected the place of business of the petitioner on 18.11.1998 and found certain defects. Based on which, notices were issued to the petitioner on 27.12.2010, calling upon the petitioner to show cause as to why their claim on Branch Transfer to their Depot at Tada be disallowed and be treated as sales effected from the Tamil Nadu only. There was also a proposal to levy penalty, under section 9(2) read with section 12(3) of the TNGST Act. The petitioner was granted time to produce Books of Accounts and ultimately, the petitioner submitted their reply on 23.08.2013, for the year 1995-96 and further replies were also submitted as well and the dates of such replies may not be very relevant for the purpose of deciding the present controversy.

4.The respondent while passing the impugned orders, has referred to the objections raised by the petitioner in their objections/replies to the show cause notices. The sole reason for disbelieving the petitioner's case is by referring to the statement which was given by the Senior Operation Officer of the petitioner-Corporation before the Deputy Commercial Tax Officer on 18.11.1998 i.e. the date on which the inspection was done in the business premises of the petitioner. In the said statement, the Officer of the petitioner-Corporation had stated that as and when the vehicles arrived in Tada, they made entries in their Receipt Register, retained the documents of Madras Office, Checked up the quality of the Petrol/Diesel, then raised sales invoices/cash memo froms Tada to the actual customers who have given orders for supply, make entries in the delivery register and allow the vehicles to go. Further, it was stated that on a particular day, most of the vehicles on reaching Tata from Chennai were sent out to supply the products, as such to the actual consumers/dealers in the same vehicles without unloading.

5.Relying upon the said statement, the respondent concluded that it is a case of inter-state sale and not a case of stock transfer. The fundamental error committed by the respondent in concluding that it was the case of inter-state sale was on account of the fact that the respondent did not conduct any enquiry on the Form-F Declaration filed by the petitioner.

6.The type of enquiry to be conducted when Form-F Declaration is filed by the dealer was explained by the Hon'ble Supreme Court in the case of ASHOK LEYLAND LTD., v. STATE OF TAMIL NADU AND ANOTHER [2004 (volume 134) STC 473]. In the said decision, the Hon'ble Supreme Court referred to the decision of the Kerala High Court in the case of C.P.K.Trading Company V. Additional Sales Tax Officer, III Circle, Mattancherry [(1990) 76 STC 211 (Ker)], in which the Kerala High Court held that the assessing authority can conduct an enquiry to find out whether the particulars in the declaration furnished are correct, or dependable, or in accord with facts and accurate or genuine. That alone is the scope of the enquiry contemplated by section 6A(2) of the Act. On the conclusion of such an enquiry, he should record a definite finding, one way or the other.

7.It was further held that the nature of enquiry, that can be conducted by the assessing authority under Section 6A(2) of the Act, is certainly for him to decide. It is his duty to verify and satisfy himself that the particulars contained in the declaration furnished by the dealer are "true". As a quasi-judicial authority, the assessing authority should act fairly, and reasonably in the matter. During the course of the enquiry, under Section 6A(2) of the Act, it is open to the assessing officer to require the dealer to produce relevant documents or other papers or materials which are germane or relevant, to find whether the particulars contained in the declaration (F forms) are "true". It is not possible to specify the documents or other materials or papers that may be required, to be furnished in all situations and in all cases. It depends upon the facts and circumstances of each case. The power vested in the officer is a wide discretionary power, to find, whether the particulars contained in the declaration (F forms) are "true". It is not possible or practicable to lay down the exact documents or materials that may be required in all the cases, by the assessing authority, to come to a proper and just finding as required by Section 6A(2) of the Act.

8.Admittedly, in the instant case, the respondent did not conduct any enquiry, nor there is any observation made in the impugned orders rejecting the Form-F Declarations. As pointed out earlier, the sole reason for passing impugned orders was by referring to the statement recorded by the Enforcement Wing Officer from the Senior Operation Officer of the petitioner-Corporation. Thus, in the absence of any enquiry, the conclusion arrived at by the respondent that it was a case of inter-state sale, deserves to be rejected.

9.Further, the Hon'ble Division Bench of this Court in the case of A.DHANDAPANI v. STATE OF TAMIL NADU AND ANOTHER [(1995) 96 STC 98 (Mad)], also considered an identical issue and held as follows:

> "17. As a result of the aforesaid discussions, the following conclusions emerge :
>
> (i) Rule 4(3A) of the CST (TN) Rules is directory and not mandatory Contravention of the said rule does not warrant punishment. When form F is filed by a dealer, he chooses or elects the mode of proving that the transfer of the goods is otherwise than by way of sale. Therefore, he has to prove that the particulars contained in form F are true. In the event he fails to prove that the particulars mentioned in form F are true and no other material evidence is placed before the authority to support the stand of the dealer that the transfer of goods is otherwise than by way of sale, the decision or inevitable result would be that the transfer of goods is by way of sale in the course of inter-State trade or commerce, as such, it is exigible to sales tax under tax CST Act.
>
> (ii) The enquiry required to be made under section 6A(2) of the CST Act is confined to find out the truth or otherwise of the particulars contained in form F and for this purpose other evidence if any produced by the dealer other than the particulars contained in form F is also to be considered. In the course of such enquiry, it is open to the authority to call for any other information in order to verify the truth or otherwise of

> the particulars contained in the declaration filed in form F. The "any other information" may be that which rule 4(3A) of the CST (TN) Rules require a dealer to maintain, except the one required under rule 4(3A)(d) or any other evidence relating to the issue, in order to adjudicate whether the particulars mentioned in form F are true. The copies of the bills issued by the agents to the purchasers as required by rule 4(3A)(d) need not be produced, not it is open to the assessing authority to call for such bills. "

The above decision would also go to establish that in the absence of any enquiry done by the Assessing Officer, the respondent cannot take a stand that the transaction was not one of stock transfer.

10.The learned counsel for the petitioner would point out that merely because the goods were disposed of on the same day, in the same vehicle, would not by itself be a reason to disbelieve the transaction as a stock transfer. In this regard, reference was made to the decision of the Hon'ble Division Bench of this Court in the case of THE STATE OF TAMIL NADU. REP.BY THE DEPUTY COMMISSIONER(CT) v. KALPANA LAMP COMPONENTS (PVT) LTD., [Tax Case Nos.548 and 549 of 1985 dt. 24.01.2001], wherein the Hon'ble Division Bench held has follows:

> "2.........The Tribunal has concluded that there was no contract pursuant to which the goods had moved to destinations outside the State and that in fact the goods were moved as stock transfers from the assessee's factory to the branch office outside the State. It has also held that the local sales tax had been paid on the local sales effected in the State where the assessee maintained depots. The essential ingredients of the contract of sale pursuant to which the goods could be said to have been moved being absent and the existence of such a contract also not having been inferred from the proved facts. It is not possible to accept the contentions for the Revenue that the transactions though subject to sales tax in other States as local sales were nevertheless inter-state sales."

The above decision would clearly shows that the Tribunal in the said case concluded that there was no contract pursuant to which the goods have moved to the destination, outside the State. Furthermore, it was also held that the local taxes have been paid on the local sales effected in the States, where the assessee maintained Depots.

11.Thus, essentially if an enquiry is conducted, the aforesaid facts would definitely come to light and the Assessing Officer can examine all those documents as to whether it was a case of consignment sale or an inter-state sale.

12.During the pendency of these Writ Petitions, the petitioner has obtained a certificate from the Assistant Commissioner, LTU, FAC, Seconderabad Division, Hyderabad, dated 30.12.2015, certifying that the assessment orders under the APGST for the assessment years 1994-95 to 1997-98, were completed by the Commercial Tax Officer, Market Street Circle and for the assessment period 1998-99 was finalized by the then Assistant Commissioner (CT)LTU Seconderabad Division under APGST Act and the assessee (petitioner) remitted tax under APGST Act for the goods received by them from various locations situated outside the State of Tamil Nadu. Further, the certificate states that the dealer company inter alia had received goods by Tada Depot from Chennai location during the assessment years 1994-95 to 1998-99 and paid taxes accordingly in the State of Andhra Pradesh. Further, the certificate records that to substantiate their claim, they furnished the copies of assessment orders and Form-F issued to Chennai State for the assessment years 1994-95 to 1998-99.

13.The effect of the said certificate should also be examined by the respondent while conducting the enquiry on the Form-F Declaration filed by the petitioner, as explained by the Hon'ble Supreme Court as well as the Hon'ble Division Bench of this Court, in the above referred decisions.

14.The above reasoning is sufficient to hold that the respondent has misdirected itself in not posing a right question for arriving at a correct conclusion. Had the respondent examined the correctness of Form-F Declaration and conducted an enquiry, by making necessary verification, then the respondent would have arrived at a correct conclusion and on account of the fact that the enquiry was not conducted, it has resulted in an erroneous order being passed. For all the above reasons, this Court is of the considered view that the impugned orders are not sustainable and call for interference.

15.Accordingly, the Writ Petitions are allowed, the impugned orders are quashed and the matter is remanded to the respondent to conduct enquiry, examine the correctness of the Form-F Declaration and afford an opportunity of personal hearing to the petitioner. As regards the scope of enquiry, the respondent shall take note of the decisions referred to in the preceding paragraphs and thereafter pass a speaking order on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rpa

To

The Deputy Commissioner (CT)-II(FAC)
Large Tax Payers Unit
5th Floor, Duggar Towers
34, Marshalls Road,
Egmore, Chennai 600 008.

+ 1 cc to Mr.N.Prasad, Advocate SR.63534

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SSI(CO)
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