

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.1.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.417 to 420 of 2018

and WMP.Nos.470 to 473 of 2018

Bharat Petroleum Corporation
Ltd., rep.by its DGM (Finance),
SS South N.Lakshmi ...Petitioner in all WPs.

Vs

The Deputy Commissioner (ST)-1,
Large Tax Payers Unit, Dugar
Towers, V Floor, 34 (123),
Marshalls Road, Egmore, Chennai-8. ...Respondent in all WPs.

PETITIONS under Article 226 of The Constitution of India
praying for the issuance of Writs of Certiorari to call for the
records on the files of the respondent herein respectively in
TIN/33941021809/2012-13, TIN/ 33941021809/2013-14,
TIN/33941021809/2014-15 and TIN/33941021809/ 2015-16 dated
07.12.2017 and quash the same.

For Petitioner : Mr.N.Prasad
For Respondent : Ms.G.Dhana Madhri, GA

COMMON ORDER

Ms.G.Dhana Madhri, learned Government Advocate accepts notice
for the respondent. Heard both. Since there are glaring errors,
which are apparent on the face of the impugned orders, the writ
petitions are taken up for joint disposal.

2. The learned Government Advocate has raised a preliminary
objection regarding the maintainability of the writ petitions on
the ground that the petitioner has an effective alternate remedy of
filing an appeal before the Appellate Authority as provided under
the provisions of the Tamil Nadu Value Added Tax Act, 2006
(hereinafter called the TNVAT Act, 2006). In support of her
contention, reliance is placed on the decision of the Hon'ble
Supreme Court in the case of **Punjab National Bank Vs. O.C.Krishnan**
[Civil Appeal No.5287 of 2011 dated 13.8.2001].

3. I have carefully considered the said submissions of the
learned Government Advocate.

4. In these writ petitions, the challenge is to the orders of assessment passed by the respondent under the provisions of the TNVAT Act, 2006 for the years from 2012-13 to 2015-16. This Court is convinced to entertain the writ petitions for the reason that in the proposal to reopen the assessment, which was deemed to have been completed under Section 22(2) of the TNVAT Act, 2006, no proper facts were disclosed as to on what basis, the respondent proposed to reopen the assessment and assess the petitioner's turnover to a higher rate of tax. It is only in the impugned assessment orders the respondent opened his mind, from a reading of which, it is seen that the respondent is of the opinion that the manufacturing process, which is involved in the production of light diesel oil (LDO) is different and that therefore, it will not be covered within the ambit of diesel entitled for concessional rate of duty at 5%.

5. In the revision notices dated 14.11.2017, the respondent stated that on examination, it was found that as per G.O.Ms.No.77 dated 11.7.2011, LDO cannot be sold at the reduced rate of 5%. However, the said revision notices did not disclose as to on what basis, the Assessing Officer was of the opinion that the said product cannot be sold at reduced rate of 5%. Therefore, this Court finds that there has been serious violation of the principles of natural justice, which has put the petitioner in a disadvantageous position and they were prevented from meeting the point while submitting the objections, as the respondent did not disclose the basis for reopening. In such an event, the petitioner is justified in approaching this Court under Article 226 of The Constitution of India.

6. One more aspect, which weighs in the mind of this Court, to entertain these writ petitions is that the Notification issued by the Government of Tamil Nadu has been in vogue since July 2011 and for all these years, the petitioner has been supplying LDO to the Neyveli Lignite Corporation at reduced rate of 5%. Thus, the reopening proceedings would have a cascading effect on all future transactions that may be done by the petitioner Corporation and other similar Oil Corporations and this can lead to an escalation in the cost of the product ultimately resulting in increased cost of production of electricity using LDO. Thus, for the above reasons, the writ petitions are held to be maintainable and the preliminary objection raised by the learned Government Advocate is decided against the Revenue and in favour of the assessee.

7. As pointed out earlier, in the revision notices, the respondent merely stated that on examination, it was found that as per the Notification of the Government of Tamil Nadu, LDO cannot be sold at reduced rate of 5%. In the objections given by the petitioner dated 27.11.2017, the petitioner put forth three interpretations, firstly that by applying common parlance test, the term 'diesel' referred to in the Notification issued by the Government of Tamil Nadu, was referring only to high speed diesel (HSD), which is available for sale in the petrol pumps and not LDO available in petrol pumps, but are supplied for manufacturing

units.

8. Secondly, it was pointed out that as per the Bureau of Indian Standards, HSD falls under IS 1460 specification whereas LDO falls under IS 15770-2008 specification. It was further stated that LDO is used in medium and slow speed engines operating below 750 rpm and one of the usage is for power generation. That apart, the petitioner stated that after implementation of the Goods and Services Tax Act, 2017, HSD has been kept outside its purview and it is still subject to the provisions of the TNVAT Act, 2006 whereas LDU is subject to GST of 18%.

9. After the petitioner pointed out the marked differences between these two products, for the first time in the impugned orders, the respondent made certain observations with regard to the manufacturing process, which is adopted for the production of LDO. Some of the paragraphs mentioned in the impugned orders appear to have been taken from some text, the source of which has not been disclosed in the impugned orders. At best, the observations made in the impugned orders can be construed as the personal opinion of the Assessing Officer. In any event, the respondent, having now opened up his mind and disclosed as to why he proposed to reopen the assessments, which were deemed to have been completed, the petitioner should have an opportunity to put forth their objections.

10. The learned counsel for the petitioner has further submitted that the impugned orders have been passed invoking the power under Section 27 of the TNVAT Act, 2006 and have been made without affording an opportunity of personal hearing, which is mandatory.

11. The learned Government Advocate submits that even in the revision notices dated 14.11.2017, the respondent made it clear that the petitioner can avail the opportunity of personal hearing by appearing before him on any working day during office hours and explain their case in detail with necessary supporting documents and details.

12. This Court had an occasion to consider a similar observation made in other revision notice as well. This Court was of the opinion that this is not a true compliance of the requirement under Section 27 of the TNVAT Act, 2006 nor would it satisfy the principles of natural justice. This is so because after issuance of show cause notices, if a dealer submits their objections, there is every likelihood that the Assessing Officer may be convinced with the objections and may even drop the proposal. In such an event, appearing before the Assessing Officer in person is unnecessary. Secondly, for the personal hearing to be effective, the Assessing Officer has to necessarily consider the objections and form a prima facie opinion, after which, if the dealer appears and explains their case, the Assessing Officer can take a decision. Adding a sentence in the revision notices by stating that the dealer can come any time to the office of the

Assessing Officer will not satisfy the requirement of affording an effective opportunity of personal hearing.

13. The learned counsel for the petitioner has submitted that while considering the scope of an exemption notification, it is necessary for the respondent to adopt the common parlance test and in this regard, reliance has been placed on the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of **Ramavatar Vs. Budhaiprasad [reported in 1961 (12) STC 286]** wherein the Hon'ble Supreme Court considered as to how the term 'vegetables' should be understood and it was pointed out that the term 'vegetables' is to be understood as commonly understood denoting those classes of vegetable matter which are grown in kitchen gardens and are used for the table.

14. As already pointed out, the present assessments may have a cascading effect on various factors apart from the fact that it is a recurrent issue not only to the petitioner, but also others. This Court is convinced that the impugned orders have been passed in violation of the principles of natural justice and that the petitioner did not have adequate opportunity to put forth their objections, as the revision notices were bereft of particulars.

15. For all the above reasons, the writ petitions are disposed of by directing the petitioner to treat the impugned assessment orders as show cause notices and submit their objections within 15 days from the date of receipt of a copy of this order. After receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. Till such exercise is completed, no coercive action shall be taken against the petitioner. The petitioner is at liberty to place the decision in **Ramavatar Budhaiprasad** before the respondent and it shall be considered by the respondent while redoing the assessment. No costs. Consequently, the connected WMPs are closed.

Sd/-

ASST. REGISTRAR

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SUB ASST. REGISTRAR

RS

To

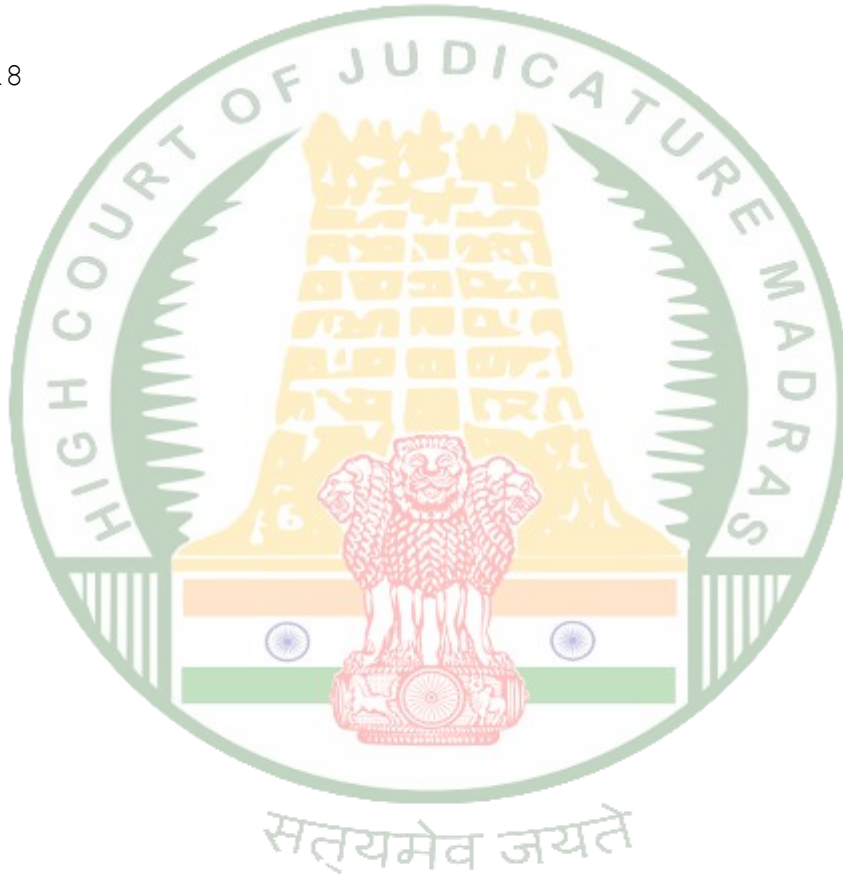
The Deputy Commissioner (ST)-1,
Large Tax Payers Unit,
Dugar Towers, V Floor,
34 (123), Marshalls Road,
Egmore, Chennai-8.

+1 cc to Mr.N.Inbarajan, Advocate SR.NO. 1761

+1 cc to the Special Government Pleader (Tax), High Court, Chennai
SR.NO. 2428

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RJ (CO)
JK 25/01/18



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