In the High Court of Judicature at Madras

Dated : 28.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.11334 to 11337 of 2018
& WMP.Nos.13236 to 13239 of 2018

Bharat Petroleum Corporation Ltd.,
rep.by its DGM Finance, SS South
N.Lakshmi ...Petitioner

Vs

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

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus 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, all dated 16.4.2018 and quash the same while directing the respondent herein to conduct an enquiry as prayed for by the petitioner in their application dated 04.4.2018.

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

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner, which is a Stated Owned Corporation, namely Bharat Petroleum Corporation Limited, has filed these writ petitions challenging the notices issued by the Assessing Officer dated 16.4.2018.

3. On a reading of the impugned notices, it is seen that they are only show cause notices, that therefore, for all practical purposes, the petitioner cannot be said to be aggrieved by the impugned notices and that they have to subject themselves to the jurisdiction of the respondent, by giving their reply, producing documents, etc.

4. The learned counsel for the petitioner submits that the petitioner is not averse in going before the Assessing Officer,

as they are awaiting necessary clarifications from the Ministry of Petroleum and Natural Gas and the Ministry of Science and Technology, that those clarifications are in the pipeline and that they will produce all the documents before the Assessing Officer. However, they have only one grievance about a finding rendered in paragraph 9 of the the impugned notices. The learned counsel for the petitioner further submits that the respondent cannot, at this stage of the matter, render a finding that no enquiry needs to be conducted as per Sections 81(1) and 82(1) of the Tamil Nadu Value Added Tax Act, 2006. If such a finding is to be rendered, then the entire proceedings will become fait accompli and cannot be treated as notices.

5. This Court is in agreement with the submissions made by the learned counsel for the petitioner. This conclusion is supported by the following reasons :

6. The question would be as to what is the rate of tax to be charged on the turnover of sale of light diesel oil. Earlier, the petitioner approached this Court and filed writ petitions in W.P.Nos.417 to 420 of 2018 challenging the assessment orders dated 07.12.2017 for the very same years. This Court, taking note of the fact that there are glaring errors, which are apparent on the face of the orders dated 07.12.2017, interfered with those orders and remanded the matters to the respondent for a fresh consideration by disposing of the said writ petitions by a common order dated 10.1.2018. The relevant portions of the common order dated 10.1.2018 read as follows :

> "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."

7. On remand, the respondent took up the issue and it appears that proceedings are going on in the right direction, but for the finding rendered in paragraph 9 of the impugned

notices. In my considered view, the respondent should not have foreclosed the petitioner's right to assert that enquiry under Sections 81(1) and 82(1) of the said Act is required. If that is to be done, at this stage of the matter, the impugned proceedings cannot be termed as notices, but to be termed as orders. Since the matters are still in the stage of objections being considered, the respondent should postpone such a decision and take up the cases when he adjudicates the matters and passes the orders of assessment. For all the above reasons, this Court is inclined to dispose of these writ petitions with some observations/directions.

8. Accordingly, the writ petitions are disposed of by directing the respondent to keep the finding rendered in paragraph 9 of the impugned notices in abeyance, as it is premature for the respondent to come to such a conclusion and as the proceedings is still in the show cause notice stage. The petitioner is directed to produce all the necessary documentary evidence and clarifications to substantiate their claim that lower rate of tax has to be levied on the sale of light diesel oil. After the objections/materials are placed by the petitioner in full, the respondent shall take up the cases for adjudication and in the course of adjudication, shall take a decision as to the contentions advanced by the petitioner based on Sections 81 (1) and 82(1) of the said Act. The petitioner shall place all the materials before the respondent within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

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

+1cc to Mr.N.INBARAJAN, Advocate, S.R.No.32093
+1cc to the Government Pleader, S.R.No.32683

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NA(CO)
TR(16/05/2018)