IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 18.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.Nos.17638 to 17641 of 2008
and
M.P.Nos.2 of 2008 in W.P.Nos.17638, 17639 & 17641 of 2008
and
M.P.No.1 of 2008 in W.P.No.17640 of 2008

M/s.Standard Energy Products and
Chemicals Pvt. Ltd.,
Rep. by its Managing Director
I.Zahir Hussain,
168-C, Third Street,
Saibaba Colony,
Coimbatore. ... Petitioner in all Wps

Vs

1. The Commercial Tax Officer,
Saibaba Colony Assessment Circle,
18, Balasundaram Road,
Coimbatore - 18.

2. The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600005. ... Respondents in all Wps

PRAYER in W.P.No.17638 of 2008: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records on the files of the first respondent in TNGST.2061204/2003-04 dated 16.03.2006 adopting 16% on the sales of fuel additives and connected clarification No.163/2002 D.Dis.Acts.Cell-II/20337/2002 dated 08.07.2002, 201/2003 D.Dis.Acts.Cell.-II/60702/2003 dated 11.10.2003, 169/2004 L.Dis.Acts.Cell.II/67577/2004 dated 13.07.2004 issued by the second respondent and quash the same as being contrary to the intention of the legislature and provision of law and judgments of both the Hon'ble High Court of Madras and Apex Court of this Land in W.A.No.1014/06 dated 25.08.2006 and 3 SCC Page 1 and 15 VST Page 256 respectively and further direct the first respondent to pass assessment orders adopting 12% tax only on the basis of the returns filed by the petitioners under the TNGST Act, 1959.

PRAYER in W.P.No.17639 of 2008 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records on the files of the first respondent in TNGST.2061204/2004-05 dated 25.07.2007 and connected proceedings in ROC.271/2008-A1 dated 17.06.2008 and quash the same as being contrary to the the principle laid down by this Court in the judgment reported in 146 STC Page 642, apart from being against the executive instructions of the second respondent insofar as declining to accept declaration forms is concerned and also in the light of the decisions reported in 61 STC 318 (SC), 140 STC Page 97 and the Honourable Supreme Court and 3 SCC Page 1 and 15 VST Page 256 and W.A.No.1014/06 dated 25.08.2006 insofar as adoption of 16% tax on the sales of fuel additives is concerned and further direct the first respondent to pass assessment order for the year 2004-2005 on the basis of the returns filed by the petitioners and also accepting the declaration forms submitted by the petitioner before the first respondent.

PRAYER in W.P.No.17640 of 2008 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records on the files of the first respondent in CST.686260/2004-05 dated 25.07.2007 and connected proceedings in ROC.271/2008-A1 dated 17.06.2008 and quash the same as being contrary to the the principle laid down by this Court in the judgment reported in 146 STC Page 642, insofar as declining to accept declaration forms is concerned and also in the light of the decisions reported in 61 STC 318 (SC), 140 STC Page 97 and W.A.No.1014/06 dated 25.08.2006 and the Honourable Supreme Court in 3 SCC Page 1 and 15 VST Page 256, insofar as adoption of 16.8% tax on the sales of fuel additives is concerned and further direct the first respondent to pass assessment order for the year 2004-2005 on the basis of the returns filed by the petitioners and also accepting the declaration forms submitted by the petitioner before the first respondent.

PRAYER in W.P.No.17641 of 2008 : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, calling for the records on the files of the first respondent in CST.686260/2003-04 dated 31.10.2007 adopting 16.8% on the sales of fuel additives and connected clarification No.163/2002 D.Dis.Acts.Cell-

II/20337/2002 dated 08.07.2002, 201/2003 D.Dis.Acts.Cell.-II/60702/2003 dated 11.10.2003, 169/2004 L.Dis.Acts.Cell.II/67577/2004 dated 13.07.2004 issued by the second respondent and quash the same as being contrary to the intention of the legislature and provision of law and judgments of both the Hon'ble High Court of Madras and Apex Court of this Land in W.A.No.1014/06 dated 25.08.2006 and 3 SCC Page 1 and 15 VST Page 256 respectively and further direct the first respondent to pass assessment orders adopting 12% tax only on the basis of the returns filed by the petitioners under the TNGST Act, 1959.

For Petitioner : Mr.R.Senniappan
(in all WPs)

For Respondents: Mrs.Dhanamadhri, GA
(in all WPs)

C O M M O N   O R D E R

The limited grievance of the petitioner is that he was unable to file the Form-C declaration prior to the assessment years and when he had sought for revising the order under Section 55 of the TNGST Act, the respondents had rejected the same, stating that the option available to the petitioner is only to file an appeal.

2. By relying upon the circular of Commissioner of Commercial Taxes dated 28.02.2001, the learned counsel for the petitioner submitted that the Assessing Officer is empowered to accept the declaration under Section 55. It is also brought to the notice of this Court that various orders have been passed by this Court to the effect that though non furnishing of the declaration may not amount to rectification of the error as contemplated under Section 55, the Assessing Officer could be directed to re-assess the order by permitting the dealers to furnish the additional C form within the time limit prescribed therein.

3. In view of the limited prayer sought for and also on the basis of the clarifications issued by the Commissioner, as well as the decisions of this Court, the assessment orders dated 16.03.2006, 25.07.2007 and 31.03.2007, are set aside and the matter is remanded back to the 1st respondent herein for re-assessment. While exercising such powers, the petitioner is granted liberty to file the necessary declarations, if not already produced, within a period of 4 weeks from the date of receipt of copy of this order. Thereafter, the Assessing Officer shall endavour to re-assess and pass final orders, as expeditiously as possible.

4. Accordingly, the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1. The Commercial Tax Officer,
   Saibaba Colony Assessment Circle,
   18, Balasundaram Road,
   Coimbatore - 18.

2. The Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600005.

+1 CC to Mr.R.Senniappan, Advocate sr 61398.
+1 CC to The Spl. Govt. Pleader (T) sr 62052.

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BP(CO)
SP(20/09/2019)