

In the High Court of Judicature at Madras

Dated: 06.09.0219

Coram

The Honourable Dr.Justice ANITA SUMANTH

Writ Petition No.16218 of 2009

and M.P.Nos.1 and 2 of 2009

Hindustan Petroleum Corporation Limited

Represented by its Power of Attorney Holder

R.Radhakrishnan

..... Petitioner

Vs.

The Deputy Commissioner (CT) I,

Fast Track Assessment Circle - II,

PAPJM Buildings,

Greens Road, Chennai - 600 006.

..... Respondent

PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari to call for the records on the files of the respondent herein in TNGST/0540163/2003-2004 dated 13.07.2009 and the quash the same.

For Petitioner: Mr.N.Prasad

For Respondent: Mr.V.Haribabu, AGP (T)

सत्यमेव जयते
O R D E R

The petitioner is the Hindustan Petroleum Corporation Limited. The order of assessment impugned before me relates to the period 2003-04, passed in terms of the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act').

2. The petitioner had effected supplies of various goods including Low Sulphur Heavy Stock, but barring Motor Spirit, High Speed Diesel Oil and Light Diesel Oil, to registered dealers situated in the State of Tamil Nadu. The dealers issued declarations in Form XVII, on the basis of which the petitioner was claiming the benefit of levy of concessional rate of tax at 3%. The petitioner has been claiming and has been granted the said relief for several years both prior to and after the period

in question consistently. This is not in dispute.

3. While this was so, for the period 2003-04, the Assessing Authority questioned the claim of concessional rate of tax, by issuance of notice dated 25.5.2009. The notice proposed to withdraw the benefit of concessional rate of tax granted at the original instance and assess the sales at regular rate of tax on the ground that no Register of Declarations maintained in the prescribed manner, has been filed in support of the petitioners' claim. Various discrepancies in the Forms filed were also pointed out. In addition to the proposed rejection of the claim for concessional rate, other proposals for modification of returned turnover were also made in the notice.

4. The petitioner sought some time on 05.06.2009 to file a reply and thereafter filed detailed objections on 30.06.2009 explaining the basis of the claim and reiterating its eligibility for concessional rate under section 3(4) of the Act. Inter alia, the petitioner also sought some time to rectify the defects pointed out in the pre-assessment notice and re-present the Forms duly corrected and containing all details as required/sought for.

5. The Assessing Authority however directed the petitioner to carry out the rectification on or before 30.06.2009. By letter dated 01.07.2009 the petitioner sought extension of time for rectification of the Forms pointing out that a mere four days had been granted for such rectification which was impossible since the dealers in question were spread far and wide over the entire State of Tamil Nadu. A copy of the letter was marked to the Joint Commissioner with a request for his intervention in the matter. The Joint Commissioner, vide letter dated 02.07.2009, instructed the Assessing Officer to grant time as sought for in line with the principles of natural justice. In gross violation of the instructions of the superior officer, the Assessing Authority has passed the impugned order of assessment dated 13.07.2009 confirming the pre-assessment proposal.

6. I have heard the learned counsel on both sides and studied the papers and case law carefully.

7. As far as the ground relating to the violation of principles of natural justice is concerned, such violation is writ large on the face of the record. Admittedly the petitioner, a Public Sector Undertaking, had responded to the pre-assessment proposal on 30.06.2009. While the objections itself contain a detailed exposition of the stand of the petitioner, it had sought some more time to furnish complete factual particulars and supporting evidences as well as corrected statutory Declarations in support of its claim. While four weeks were sought, the petitioner was directed to file the same in four days. Thus the intervention of the superior authority was sought who also directed the Assessing Authority to grant the time

sought for by the petitioner to enable it to comply with the requirements of law. The Assessing Authority has however ignored both the request of the petitioner as well as the specific instruction of his superior officer, proceeding to complete the impugned assessment immediately.

8. The Supreme Court in the case of Union Of India And Others vs Kamalakshi Finance Corporation (1991 (55) ELT 433) has deprecated the practice of the Assessing Authorities ignoring/flouting the orders of the superior authorities in the context of framing of assessments. Equally so, in the present case, the petitioner is seen to have been co-operating in the conduct of the assessment and there was thus no reason whatsoever for the Assessing Authority to have arbitrarily ignored the request for reasonable time as sought for by the petitioner or the instructions of his superior to grant the time as sought for by the petitioner. Thus, I am inclined to set aside the assessment on the ground of violation of principles of natural justice and I do so.

9. One of the issues that arisen in the assessment is a legal issue in respect of which all facts are available on record. I thus consider it appropriate to deal with the issue on merits and render a finding that will be given effect to by the Assessing Authority while finalising the assessment. The rest of the assessment shall be completed de novo as directed above.

10. The petitioner has claimed concessional rate of tax on goods, barring High Speed Diesel Oil, Light Diesel Oil and Molasses, sold by it to registered dealers within the State. The exemption claimed is in terms of section 3(3) of the Act, extracted below:

'Section 3(3) Notwithstanding anything contained in sub-section(2), (2-A) or (2- C), but subject to the provisions of sub-section (1), the tax payable by a dealer in respect of sale of any goods including consumables, packing materials and labels, but excluding plant and machinery, to another dealer for use by the latter in the manufacture, and assembling, packing or labeling in connection with such manufacture inside the Sate, for sale by him of any goods other than ethyl alcohol, absolute alcohol, methyl alcohol, rectified spirit, neutral spirit and denatured spirit, goods falling under Part A of the Third Schedule, goods falling under item 1 of the Sixth Schedule and arrack, shall be at the rate of only three percent on the turnover relating to such sale.

Provided that the provisions of this sub-section shall not apply to -

(a) any sale of high speed diesel oil, light diesel oil and molasses ; and

((a) any sale of goods falling under items 1 and 2 in Part F and item 2 in part I of the said schedule; and

(b) any sale, unless the dealer selling such goods furnishes to the assessing authority in the prescribed manner and within the prescribed period, a declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in the prescribed form obtained from the prescribed authority;

Provided further that any dealer who, after purchasing the goods in respect of which he had furnished any declaration, fails to make use of the goods so purchased for the purpose specified in the declaration but disposes of such goods in any other manner, shall pay the difference of tax payable on the turnover relating to sale of such goods at the rate prescribed and three per cent:

Provided also that the dealer purchasing the goods maintains a separate stock account for each of the goods purchased by him showing such particulars as may be prescribed.'

11. Initially the Commercial Taxes Department was of the view that commodities/consumables, such as fuels and lubricating oil etc. purchased against Form XVII would be entitled to relief under section 3(3), although not used directly in manufacture. This was sought to be restricted by letter dated 31.07.2000 to the effect that the benefit of concessional rate of tax would not be available in respect of fuels since such fuels were only used for the generation of electricity which is one step removed from the activity of actual manufacture mandated under section 3 (3). Pursuant to representations from industry to the effect that the generation of electricity is, in fact, part and parcel of the industrial activity itself and an activity that constitutes a necessary incident to maintain and ensure continuous process, a Clarification was issued by the Commissioner of Commercial Taxes on 24.10.2000 to the effect that all consumables including fuels, furnace oil and LSHS will be entitled to relief under section 3(3) of the Act. The only bar was in respect of the commodities mentioned in the proviso being High Speed Diesel Oil, Light Diesel Oil and Molasses. The position that furnace oil, LSHS and other fuels are entitled to relief under section 3(3) has thus been subject to intra-Departmental discussion extensively and confirmed only thereafter.

12. The impugned order of assessment however takes a stand contrary to the assessee by relying on the judgment of the Supreme Court in the case of Hindustan Transmission Products Limited V. State of Kerala (18 VST 587). The Officer however appears to have lost sight of the fact that the aforesaid judgment has been rendered in the context of the provisions of Section 5(3) of the Kerala General Sales Tax Act (KGST) and the applicability of the same to the petitioners' case, one that is governed by the provisions of the Tamil Nadu enactment, is not automatic but would have to be tested in the light of the specific statutory provisions.

13. The relevant provisions of the KGST are extracted below:

'5. Levy of tax on sale or purchase of goods: -

.....

(3) (i) Notwithstanding anything contained in sub-section (1) or sub section (2), the tax payable by a dealer in respect of any sale of the goods mentioned in the First Schedule by such dealer to another for use by the latter as component part of any other goods mentioned in the said Schedule, which he intends to manufacture inside the State for sale, shall

be at the rate of only one per cent on the taxable turnover relating to such sale:

PROVIDED that the provisions of sub-section shall not apply to any sale unless the dealer selling the goods furnishes to the assessing authority in the prescribed manner a declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in the prescribed form.

Provided further that the goods sold are capable of being used as component part of any of the goods mentioned in the First Schedule.

Explanation

For the purposes of this subsection, 'component part' means an article which forms an identifiable constituent of any finished product, which along with others goes to make up the finished product and which is identifiable visually and is separable by a mechanical process and not by a chemical process, provided the identity of such article is not lost by separation.'

14. A comparison of section 3(3) of the TNGST with section 5(3) of the KGST reveals that the latter was intended to benefit

only a seller of component parts, as specified in the 2nd proviso to the section and as defined in the Explanation thereto. The provision that was interpreted by the Supreme Court contained a specific requirement that the selling dealer had an obligation to satisfy the 2nd proviso and that the goods dealt with constituted components as defined. Moreover there was no machinery in section 5(3) to provide or ensure that the tax differential could be collected from the purchasing dealer in the event the goods were not utilised for the stated or declared purpose as in the case of section 3(4) of the Tamil Nadu enactment. .

15. Thus it is clear that the purport of the statutory provisions in the Kerala General Sales Tax Act was different and a decision rendered in the context of one enactment cannot be relied upon to support a transaction under another state enactment unless the provisions are couched in comparable language and the object and intendment of the provisions are shown to be the same. All transactions of sale within the parameters of Tamil Nadu are, primarily, to be decided only in the light of the provisions of the domestic State law.

16. Section 3(3) of the TNGST Act stipulates only two conditions. The first, in regard to the nature of the goods, meaning thereby, that the benefit is available in respect of sale of 'any goods including consumables, packing material and labels' but excluding capital goods such as plant and machinery, and secondly the use of the goods in manufacture, assembling, packing or labelling of any goods other than alcohol and spirits.

17. Admittedly these two conditions are satisfied in the present case and there is no dispute raised by the Revenue in this regard. The proviso restricts such benefit to the sale of specified commodities, that is, High Speed Diesel Oil, Light Diesel Oil and Molasses, in respect of which, admittedly exemption has not been sought for by the petitioner. Thus there is no dispute on the factual position that all conditions as laid down by section 3(4) and the proviso thereunder have been complied with in this case.

18. The case sought to be made out by the Assessing Authority is that the furnishing of the statutory Declaration by itself would not entitle the petitioner to concessional rate and the burden lies heavy upon it to establish that the goods sold have, in fact, been utilised by the purchasing industry, in manufacture. This issue has been considered and decided in a slew of decisions rendered by various Benches of this Court culminating in a decision of the First Bench of this Court in the case of Sree Murugan Engineering Products V. Commercial Tax Officer, Coimbatore (148 STC 419), rendered after considering earlier decisions of this Court in the case of State of Tamil Nadu V. Madras Petrochemicals Ltd. (89 STC 438), Premier

Electro-Mechanical Fabricators V. State of Madras (22 STC 269) and State of Tamil Nadu V. Seema Udyog (W.P.No.10610 of 2000 order dated 04.12.2001 that follows the judgment of the Supreme Court in the State of Madras V. Radio and Electricals Ltd. (18 STC 222). The Bench in Sree Murugan Engineering (supra) refers to Maruti Handling Equipments V. Deputy Commercial Tax Officer (W.A.No.994 of 2006 and W.P.No.22331 of 2006 dated 10.08.2006) wherein this Court has categorically held that the manner in which a purchasing dealer deals with the goods is not the concern of the seller and if they are violations/misuse of the Form that come to the notice of the Department, liability in such case can be fastened only upon the purchasing dealer and not the seller.

19. This issue is thus categorically settled and Mr.Haribabu, learned Additional Government Pleader for the Revenue, with his usual fairness also confirms that this order has become final. Interestingly, the assessing authority has also noted this decision of the Division Bench of this Court but does not follow it, since the judgment of the Supreme Court in Hindustan Transmission Products Ltd. (supra) has not been considered by the Bench therein. He also notices the Clarification referred to by me earlier at paragraph 11 which confirms the availability of concessional rate for sale of furnace oil and other fuels but declines to use it, again for the reason, that the judgment of the Supreme Court as aforesaid has not been noted therein.

20. The foundation of the order of assessment on this issue is the judgment of the Supreme Court, which, as I have examined and held, has been rendered in the context of two State enactments that are different from the Tamil Nadu statute.

21. In the light of the categoric pronouncement of this Court in Sree Murugan (supra), the petitioner is entitled to the benefit of concessional rate of tax in terms of Section 3(3) of the Act.

22. I may also note the inconsistency in the view taken by the Assessing Authority in the present order as compared with the orders for previous and subsequent assessment periods.

23. The petitioner will appear before the Assessing Authority for de novo finalisation of assessments of all issues barring the issue decided by me above, on 23.09.2019 at 10.30 a.m. No fresh notice need be issued in this regard. After

hearing the petitioner and considering materials, if any, that may be produced by it in support of its stand, the Assessing Authority will pass an order of assessment in accordance with law, within period of six weeks from date of conclusion of personal hearing.

24. The Writ Petition is allowed in the above terms. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Sl

To

The Deputy Commissioner (CT) I,
Fast Track Assessment Circle - II,
PAPJM Buildings,
Greens Road, Chennai - 600 006.

+1cc to Mr.N.Inbarajan, Advocate, SR.77445

+1cc to the spl Government Pleader(Taxes), SR.77612

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SR(CO)
CB(04/10/2019)

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