IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 02.01.2019
CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.32232 to 32234 of 2005
and
WMP.Nos.35148 to 35150 of 2005

Kamakhya Oil Company,
rep by its Partner Praveen Jain,
4828/24 Prahlad Lane,
Ansari Road, Daryaganj,
Delhi. .... Petitioner in all 3 writ Petitions

-vs-

1. The Principal Commissioner and
Commissioner of Commercial Taxes,
Government of Tamil Nadu,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The District Forest Officer,
Sathyamangalam Division,
Sathayamangalam - 638 402,
Tamil Nadu.

3. The District Forest Officer,
Salem Division,
Salem - 636 007,
Tamil Nadu.

4. The Principal Chief Conservator
of Forest,
"Panagal Maaligai", Saidapet,
Chennai - 600 015.
...Respondents in all 3 writ petitions

Common Prayer in WP.No.32232 & 32234 of 2005: Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, forbearing the 2nd respondent herein from giving effect to the instructions of the first respondent vide his Lr.No.48623/2002 dated 24.07.2003 by recovering any Sales Tax other than 4% of Central Sales Tax against Form-C declaration of the petitioners for effecting delivery of sandalwood confirmed under Sale order No.L/7410/2005 dated 20.07.2005 and 30.07.2005 of the second respondent herein for the use and consumption by the petitioners at its factory outside the State of Tamil Nadu.

Prayer in WP.No.32233 of 2005: Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, forbearing the 3rd respondent herein from giving effect to the instructions of the first respondent vide his Lr.No.48623/2002 dated 24.07.2003 by recovering any Sales Tax other than 4% of Central Sales Tax against Form-C declaration of the petitioners for effecting delivery of sandalwood confirmed under Sale order No.7548/05-S dated 28.07.2005 in favour of the petitioners for the use and consumption by the petitioners at its factory outside the State of Tamil Nadu.

For Petitioner : M/r.K.A.Parthasarathy in all 3 petitions

For Respondent 1 : Mr.M.Hariharan, Addl.Govt. Pleader in all 3 writ petitions.

For Respondents 2 to 4 : No appearance.

COMMON ORDER

The relief sought for in the writ petitions are to forbear the 2nd respondent from giving effect to the instructions of the first respondent vide his Lr.No.48623/2002 dated 24.07.2003 by recovering any Sales Tax other than 4% of Central Sales Tax against Form-C declaration of the petitioners for effecting delivery of sandalwood confirmed under Sale order No.L/7410/2005 dated 20.07.2005 of the second respondent for the use and consumption by the petitioners at its factory outside the State of Tamil Nadu.

2. The learned counsel appearing on behalf of the respondents submitted the judgment of the Hon'ble Supreme Court of India passed in Civil Appeal No.2421 of 2006. The learned counsel for the writ petitioner also conceded that the issues raised in the present writ petition is covered by the order passed by the Hon'ble Supreme Court of India in the civil appeal cited supra. The Apex Court passed the following orders in paragraphs 3,4,5,6 and 7 of the judgment.

> "3. In view of the above, we permit the appellant along with the District Forest Officer to participate before the assessing authority and produce all such relevant documents and also the case laws on the point to demonstrate that the transactions were 3 completely inter-State sales and not intra-State sales. We further direct the assessing authority to consider the documents and also look into the decisions on

which reliance is placed by the learned counsel to arrive at a proper conclusion.

4. We are informed that when demands were made by the assessing authorities and also the District Forest Officer for payment of tax under the Tamil Nadu General Sales Tax Act, 1959, (for short, "the Act"), the appellant-herein had furnished the bank guarantees. Shri Bagaria, on instructions, would submit that those bank guarantees are kept alive. If that is so, we now permit the assessing authorities of the State of Tamil Nadu to encash the bank guarantees towards the payment of tax dues by the appellant. If, for any reason, the appellant succeeds before the assessing authority, the excess amount paid by the appellants shall be refunded to them within the statutory period and if the same is not paid within the said period, the excess amount will carry the statutory interest.

5. Further, we clarify that the High Court in the impugned judgment and order has only declared the law insofar as what constitutes an intra-State sales and inter-State sales respectively. Accordingly, we direct the assessing authority to complete the assessment of the District Forest Officer after issuing notice to the appellants-herein if the assessments are not yet complete. If for any reason, the assessments are completed 4 against the District Forest Officer, the appellants are at liberty to file appeal(s) against the assessment order wherein the liability to pay tax is quantified by the assessing authority, within a month’s time. If such appeal(s) are filed, we direct the appellate authority to consider the same on merits without reference to the period of limitation.

6. In view of the submissions made by both the learned counsels, we do not intend to answer the reference and the same is left open to be answered in an appropriate case.
7. With these observations, the Civil Appeal is disposed of. "

3. In view of the orders passed by the Apex Court, the case of the writ petitioner is also to be considered in the light of the directions issued by the Hon'ble Supreme Court of India

cited supra. Accordingly, the writ petitions stands disposed of. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

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   Commissioner of Commercial Taxes,
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   Chennai - 600 005.

2. The District Forest Officer,
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   Sathayamangalam - 638 402,
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4. The Principal Chief Conservator
   of Forest,
   "Panagal Maaligai", Saidapet,
   Chennai - 600 015.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No. 274
+1cc to the Special Government Pleader(Taxes), S.R.No. 612

W.P.Nos.32232 to 32234 of 2005

NMI(CO)
GN(28/01/2019)