IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM

THE HONOURABLE Dr. JUSTICE ANITA SUMANTH

W.P.Nos.6187, 6189 and 6192 of 2019
and
W.M.P.Nos.7026, 7027 & 7033 of 2019

M/s.IL & FS Tamil Nadu Power Company Ltd.,
Rep.by its Authorised Signatory P.Sekar,
4th Floor, KPR Tower, Old No.21, New No.2,
1st Street, Subba Rao Avenue,
College Road, Chennai - 600 006.

... Petitioner (in all W.Ps.)

Vs.

1.The State of Tamilnadu,
Rep.by its Principal Secretary,
Commercial Taxes and Registration Department,
Fort St.George,
Chennai - 600 009.

2.The Principal Commissioner of Commercial Taxes,
Ezhilagam, Chepuak,
Chennai - 600 005.

3.The Assistant Commissioner (ST),
Arumbakkam Assessment Circle,
No.F-50, Second Floor, First Avenue,
Anna Nagar East,
Chennai - 600 102.

... Respondents (in all W.Ps.)

Prayer in W.P.Nos.6187 and 6189 of 2019:-

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the 3rd respondent in Notices dated 21.05.2018 bearing Nos.TIN: 33901465412/2017-18 and TIN:33901465412/2018-19 issued against the petitioner and quash the same.

Prayer in W.P.No.6192 of 2019:-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to issue 'C' Forms under the Central Sales Tax Act, 1956 read with the Central Sales Tax (Registration and Turnover) Rules, 1957 to the petitioner for purchase of High Speed Diesel from the suppliers in other States, for use in generation of electricity at its Power Plant and consequently, allow the petitioner to generate 'C' forms online through the e-portal of the Commercial Taxes Department of the respondents.

For Petitioner : Mr.Manoj Menon
for M/s.Menon
(in all W.Ps.)

For Respondents : Mr.M.Hariharan
Additional Government Pleader (T)
(in all W.Ps)

COMMON ORDER

Three writ petitions have been filed by the petitioner. W.P.No.6192 of 2019 is filed, seeking a Mandamus to the respondents to issue 'C' Forms under the Central Sales Tax Act, 1956 read with the Central Sales Tax (Registration and Turnover) Rules, 1957. W.P.Nos.6187 and 6189 of 2019 are filed seeking to quash the notices dated 21.05.2018, issued in respect of the periods 2017-18 and 2018-19, proposing to levy penalty at the rate of 150% in terms of Section 10(A) of the Central Sales Tax Act.

2. Mr.M.Hariharan, learned Additional Government Pleader (T) takes notice for the respondents. By consent of both sides, final orders have been passed at the stage of admission.

3. Both learned counsel concur that the position in regard to the entitlement to 'C' Forms for purchase of High Speed Diesel from supplies outside Tamil Nadu, to enable the dealers to seek a concessional rate of tax, is covered in favour of the assessee by a decision of this Court in M/s Ramco Cements Ltd. V. The Commissioner of Commercial Taxes (W.P.Nos.19460 of 2018) dated 26.10.2018 in a batch of over fifty (50) Writ Petitions.

4. A learned Single Judge of this Court in considering the issue held categorically that the benefit of the concessional rate is available to dealers who purchase High Speed Diesel from

neighbouring States by way of inter-state sales. Reference is made to the decisions of other Courts that have considered an identical issue, holding the same in favour of the assessee. In fact, the decision of the Punjab and Haryana High Court has been carried to the Supreme Court in special leave and has been confirmed in State of Haryana & Others Vs. Caparo Power Ltd. & Others in Special Leave Petition (Civil No.20572 of 2018). The issue has also been considered in Hindustan Zinc Limited & Several Others Vs. The State of Rajasthan & others (S.B.Civil Writ Petition No.5506/2018 dated 18.05.2018) and Shree Raipur Cement Plant (A unit of Shree Cement Limited) Vs. State of Chhattisgarh, Finance department (Tax Division) (W.P.(T) No.83 of 2018 dated 18.05.2018) and held in favour of the assessee.

5. Mr.M.Hariharan, learned Additional Government Pleader (T) does not dispute the above position. However, he maintains that the State proposes to challenge the order of the learned Single Judge in the case of M/s. Ramco Cements Ltd (supra) though no such appeal has been filed thus far.

6. In such circumstances, till such time the order of this court in the case of M/s Ramco Cements Ltd (supra) is either stayed or reversed it is incumbent upon all Assessing Authorities within the State of Tamil Nadu to apply the rationale of the decision to all pending assessments. The Petitioner in these Writ Petitions has stated on affidavit that it is unable to download the 'C' forms from the websites as the same stand blocked from use. Upon enquiry with the Assessing Authorities, they have been informed that the benefit of the decision in M/s Ramco Cements Ltd can be extended only to those dealers that are party to the decision. This stand is unacceptable in so far as the decision of this Court as well as other High Courts, one of which has been confirmed by the Supreme Court, are decisions in rem, applicable to all dealers that seek benefit thereunder, of course, in accordance with law.

7. Incidentally, the Union Territory of Pondicherry has filed an affidavit, in W.P.No.6435 of 2019, confirming unequivocally that the decision of this Court in M/s. Ramco Cements Ltd (supra) as stated supra has been accepted and has not been taken up on Appeal.

8. In the light of the above discussion, the prayers sought for are liable to be granted. Notices dated 21.5.2018, issued by the third respondent are quashed and mandamus is issued, directing the respondents to issue 'C' Forms forthwith, in any event within a period of two weeks from today.

9. These writ petitions are allowed in the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Secretary,
The State of Tamilnadu,
Commercial Taxes and Registration Department,
Fort St.George,
Chennai - 600 009.

2.The Principal Commissioner of Commercial Taxes,
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3.The Assistant Commissioner (ST),
Arumbakkam Assessment Circle,
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Anna Nagar East,
Chennai - 600 102.

+1cc to the Special Government Pleader Sr.37902
+1cc to M/S.Menon, Advocate Sr.36223

W.P.Nos.6187, 6189 and 6192 of 2019
and
W.M.P.Nos.7026, 7027 & 7033 of 2019

srg 25/04/2019