IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2019

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.11108 of 2019

Bannari Amman Spinning Mills Ltd.,
HT SC No.340
No.252, Mettupalayam Road,
Coimbatore - 641 043
represented by its Vice President
(Operation) K.Prabakaran
..Petitioner

vs

1. The State of Tamil Nadu,
Represented by the Secretary to Government
Commercial Taxes Department,
Fort St.George, Chennai-600 001.

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

3. The Deputy Commissioner of State Taxes,
Divisional large Tax Payers Unit
Commercial Taxes Department,
Dr.Balasundaram Road, Coimbatore - 18.
.... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue an order, direction or Writ more so in the nature of Writ of Mandamus to direct 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 the purchases of High Speed Diesel from the suppliers in other States in view of the recent Judgment dated 26.10.2018 passed by the Hon'ble Madras High Court in the case of M/s.Ramco Cements Ltd & Others in W.P.Nos.19458/2018 to 19460/2018.

For Petitioner : Mr. R.S.Pandiyaraj

For Respondents : Mr. M.Hariharan,
Additional Government Pleader (Taxes)

C O M M O N O R D E R

The petitioner in the Writ Petition has expressed its difficulty in obtaining 'C' forms under the provisions of the Central Sales Tax Act, 1956 in order to avail concessional benefit of tax for purchase of High Speed Diesel from suppliers in other States.

2. At the outset, Mr.R.S.Pandiyaraj, learned counsel for the petitioner submits that the issue in regard to 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.

3. 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.

4. Mr.M.Hariharan does not dispute the above position. However, he submits that the State has filed an appeal challenging the order of the learned Single Judge in the case of M/s. Ramco Cements Ltd (supra) with a delay of 3 days, which is pending consideration before the Division Bench.

5. 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 this Writ Petition 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.

6. The petitioner in this case has filed a representation on 19.11.2018 bringing to the notice of the Deputy Commissioner, Commercial Taxes the order of this Court in the case of Dhandapani Cement Private Ltd. V. State of Tamil Nadu (W.P.Nos.4173 and 4176 of 2019 dated 13.02.2019). The said representation is still pending.

7. In the aforesaid circumstance and in the light of the order passed above, this Writ Petition is allowed. Consequently, necessary action to be taken by the department, forthwith. No costs. Connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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Divisional large Tax Payers Unit
Commercial Taxes Department,
Dr.Balasundaram Road, Coimbatore - 18.

+1cc to Mr.RS.Pandiyaraj, Advocate SR.No.39212

+1cc to Special Government Pleader(Taxes) SR.No.39017

W.P.No.11108 of 2019

NMI(CO)
GMY(26/04/2019)